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VOLUME 1 · ISSUE 1 · JULY-DECEMBER 2026

RESEARCH ARTICLE

Reconceptualising Victim Rights under India's New Criminal Law Regime

Prof. (Dr.) Nuzhat Parveen Khan · Saleem Ahamad

Manuscript notes: [1] [2]

Abstract

Victim rights have experienced a tremendous change of being neglected in the past to being gradually appreciated in the contemporary criminal justice systems. Historically, the criminal law has been largely offender-centric in the sense that it has concentrated on the prosecution and punishment of the accused and the victims have been placed in the periphery as mere witnesses. This essay is a critical analysis of the development, extent and the modern applicability of victim rights, especially in the Indian legal system. The paper examines the conceptual premises of victimology and the need to integrate victim-centered justice into the legal framework. A particular focus is made on legislative changes including victim compensation plans and procedural changes to provide fair treatment of victims. Moreover, the paper also points out the challenges that persist, including poor implementation, ignorance, delays in the process and institutional indifference that persist in frustrating the actualization of these rights. A comparative approach is also deemed to learn about the international best practices in victim protection and rehabilitation. The paper ends with a call to a more balanced criminal justice system that would balance the rights of the accused and the legitimate interests of the victims and the importance of structural changes, more effective enforcement mechanisms, and a transition to restorative justice practices.

Keywords: Victim Rights; Victimology; Criminal Justice System; Access to Justice; Restorative Justice; Criminal Law Reforms

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RESEARCH ARTICLE

Access to Justice in Rural India: Strengthening Legal Institutions for Inclusive Development

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Abstract

Access to justice is a crucial prerequisite for inclusive development, yet it remains a relatively overlooked aspect of India's rural development agenda. This paper treats the inability of rural citizens to secure timely and affordable justice as a structural deprivation and proposes a rights-based framework that aligns legal empowerment with other fundamental capabilities.

Keywords: Access to Justice; Rural Development; Legal Empowerment; Inclusive Governance; Constitutional Rights

Access to Justice in Rural India: Strengthening Legal Institutions for Inclusive Development

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Abstract

Access to justice is a crucial prerequisite for inclusive development; however, it remains a relatively overlooked aspect of India's rural development agenda. The discussion surrounding multidimensional poverty primarily assesses deprivations related to health, education, and living standards, often neglecting the justice shortfall that hinders the realization of these rights. This paper contends that the inability of rural citizens to secure timely and affordable justice constitutes a structural deprivation that perpetuates exclusion and weakens democratic governance. Grounded in the constitutional guarantees of equality and dignity enshrined in Articles 14 and 21, along with the Directive Principles that call for legal aid and fair resource distribution, the research positions access to justice as a developmental right essential to the vision of Viksit Bharat 2047.

Utilizing the Gram Nyayalayas Act of 2008 and the Legal Services Authorities Act of 1987 as a basis, the paper thoroughly explores the effectiveness and implementation challenges of decentralized justice delivery systems. Empirical evaluations from the National Legal Services Authority and the Ministry of Law indicate ongoing deficiencies such as the limited functionality of Gram Nyayalayas. These shortcomings, as the paper contends, undermine public confidence and reinforce rural disparities that typical development initiatives cannot resolve.

In light of these issues, the study puts forth a rights-based framework of developmental justice that aligns legal empowerment with education and health as fundamental capabilities. It suggests institutional reforms focused on digital legal aid platforms, community paralegal networks, and organized collaboration among panchayats, Lok Adalat's, and Gram Nyayalayas. By integrating justice institutions into the rural governance structure, the paper concludes, India has the opportunity to reshape its poverty alleviation initiatives towards an inclusive approach where access to legal resources is not just supplementary to development but integral to it.

Keywords: Access to Justice; Rural Development; Legal Empowerment; Inclusive Governance; Multidimensional Poverty; Viksit Bharat 2047; Constitutional Rights; Institutional Reform.

I. Introduction

Conversations surrounding rural development in India have historically focused on concrete socio-economic metrics such as income, housing, health, education, and employment. However, the critical institutional factor that underpins these outcomes access to justice has largely been overlooked in the dominant developmental discourse. Justice is not simply a procedural requirement of the State; it is an essential catalyst for equitable progress. Without effective legal institutions at the grassroots level, the rights outlined in welfare legislation and constitutional guarantees remain more aspirational than actionable.[1] Thus, the inability to provide justice represents a unique form of deprivation one that reinforces social exclusion and exacerbates multidimensional poverty.[2]

The aspiration of Viksit Bharat @2047 aims to reposition India as a developed nation founded on inclusivity and sustainability.[3] Achieving this vision requires that development be perceived not only through material gains but also through the establishment of strong institutional structures that ensure fairness, participation, and accountability. In rural India, where approximately 65 percent of the population live, the justice system is often prohibitively distant geographically, economically, and culturally. Formal courts are hard to reach, legal literacy is low, and alternative dispute resolution mechanisms are often either underfunded or poorly understood.[4] The lack of accessible and affordable legal recourse directly contributes to the continuation of poverty and disempowerment.

India's constitutional framework positions justice as a key foundation of governance. The Preamble explicitly seeks to secure "Justice—social, economic, and political" for all citizens. Articles 14 and 21 of the Constitution ensure equality and the right to life and liberty, respectively, while Article 39A, introduced through the Forty-Second Amendment, instructs the State to provide equal access to justice and free legal aid. Collectively, these provisions acknowledge justice as an integral part of human dignity. Nevertheless, despite this stated

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[1] Government of India. (1976). *The Constitution (Forty-Second Amendment) Act, 1976.* Ministry of Law and Justice.
[2] NALSA. (2022). *Annual Report 2021–22.* National Legal Services Authority.
[3] NITI Aayog. (2023). *Vision Document for Viksit Bharat @2047.* Government of India.
[4] Sen, A. (1999). *Development as Freedom.* Oxford University Press.

commitment, access to justice in rural India remains hindered by structural, institutional, and social obstacles.

This paper argues that enhancing legal institutions in rural locales is crucial for realizing inclusive development. It aims to explore the foundational aspects of justice as a developmental right, analyze the legal frameworks governing rural justice delivery, highlight systemic challenges, and suggest necessary institutional reforms. By redefining justice as a quantifiable aspect of rural capability and governance quality, the paper intends to place the rule of law at the core of India's developmental path.

II. Understanding Access to Justice as a Developmental Right

The Indian constitutional framework offers a normative basis for recognizing access to justice as a developmental right. The Preamble emphasizes that justice—social, economic, and political s a fundamental principle. Article 14 guarantees equality before the law and equal protection under the law, while Article 21 assures the right to life and personal liberty, which the Supreme Court has interpreted broadly to include a variety of socio-economic rights. Notably, Article 39A, introduced through the Forty-Second Amendment in 1976, specifically mandates the State to ensure that "opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

Judicial interpretation has consistently upheld this constitutional principle. In Hussainara Khatoon v. State of Bihar (1979), the Supreme Court affirmed that the right to a speedy trial is a fundamental right implicit in Article 21.[5] Subsequently, in Anita Kushwaha v. Union of India (2016), the Court confirmed that access to justice is an integral part of the right to life, which includes not just procedural fairness but also the accessibility and affordability of institutions. The Court noted that justice must be "real, effective, and meaningful," rather than merely theoretical or illusory.[6]

III. Empirical and Structural Challenges

Even with a strong statutory and constitutional framework in place, the promise of accessible justice in rural India is still largely unfulfilled. The legal framework designed to deliver justice "to the doorstep" has struggled due to a mix of institutional inertia, administrative apathy, and

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[5] Supreme Court of India. (1979). *Hussainara Khatoon v. State of Bihar,* AIR 1979 SC 1369.
[6] Supreme Court of India. (2016). *Anita Kushwaha v. Union of India,* (2016) 8 SCC 509.

entrenched socio-cultural obstacles[7]. The subsections below describe the key empirical and structural challenges that persist in hindering effective justice delivery in villages across India.

A. Institutional Inactivity and Implementation Deficits

A prominent issue facing the rural justice system is institutional inactivity. Although the Gram Nyayalayas Act was passed over fifteen years ago, its implementation has been unpredictable and varies greatly among states. The Ministry of Law and Justice Annual Report (2023) indicates that out of 1,871 Gram Nyayalayas established, fewer than 400 are operational.[8] In several states including Bihar, Uttar Pradesh, Odisha, and Gujarat these courts exist primarily on paper.

The Law Commission of India's 245th Report (2018) credits this shortcoming to a lack of political motivation and administrative dedication.[9] Many states have failed to create the necessary infrastructure or approve positions for Nyayadhikaris. Additionally, there is poor coordination between the High Courts (which are responsible for oversight) and state governments (which are responsible for funding). Consequently, Gram Nyayalayas are often located in makeshift spaces, lack digital resources, and experience irregular sessions.

This institutional stagnation has led to a damaging cycle: low usage discourages public participation, and limited demand is then cited to justify more inaction. Overall, the initial goal of providing accessible and prompt justice has been compromised by bureaucratic red tape and a lack of financial support.

B. Legal Literacy and Awareness Deficits

A deeper barrier to justice is the prevalent lack of legal awareness. For many individuals in rural areas, the law is an unfamiliar concept seen as complicated, external, and punitive rather than empowering. Data from NALSA (2022) shows that fewer than 30 percent of rural inhabitants know about their right to free legal aid, and this figure reduces to 22 percent among women. This lack of awareness is not just a matter of information; it is systemic[10]. The absence

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[7] Bhatia, R. (2022). *Local Governance and Access to Justice in Rural India.* Indian Journal of Public Administration, 68(3), 415–431.

[8]Government of India. (2023). *Annual Report 2022–23.* Ministry of Law and Justice.

[9] Law Commission of India. (2018). *Report No. 245: Gram Nyayalayas – Justice at the Doorsteps.*
[10] NALSA. (2022). *Legal Services in India: Annual Review.* National Legal Services Authority.

of ongoing outreach, along with linguistic and educational hurdles, limits engagement with formal justice systems.

While NALSA and various State Legal Services Authorities (SLSAs) conduct occasional Legal Literacy Camps, their impact remains limited[11]. A 2021 assessment by the Centre for Social Justice found that over 60 percent of rural Gram Panchayats had not held a legal-awareness event in the past five years. The gap between legal institutions and daily governance fosters a disempowerment cycle, wherein rights exist nominally but are not actionable.

C. Socio-Cultural Barriers: Caste, Gender, and Power

Justice delivery in rural India functions within a complicated web of social hierarchies and informal power dynamics. Caste supremacy, patriarchal customs, and economic dependency often hinder the fair application of law. Research conducted in Bihar and Rajasthan reveals that Dalit complainants frequently withdraw their cases due to social pressure or fear of reprisals[12]. Women, particularly those from marginalized castes, encounter additional discrimination when pursuing claims related to land, domestic violence, or labor issues.

These structural disparities result in procedural disadvantages. Police often hesitate to document complaints, intermediaries from upper castes intimidate victims, and biases within local institutions undermine trust in the justice system. The net result is a feeling of institutional alienation a belief that the law only benefits the powerful and neglects the marginalized.

Moreover, cultural practices that prioritize reconciliation can reinforce patriarchal dominance. For example, in cases of domestic violence that go to Lok Adalats, women are regularly urged to reconcile instead of asserting their legal rights. While alternative dispute resolution mechanisms are helpful, their misuse within unequal social contexts can perpetuate injustice rather than rectify it.

D. Limitations in Resources and Capacity

[11] Ibid.

[12] Verma, S., & Sinha, K. (2021). *Caste, Gender, and Justice: Barriers to Legal Access in Bihar and Rajasthan.* Economic and Political Weekly, 56(42), 55–63.

Every level of the rural justice system is affected by financial and human resource challenges. Many District Legal Services Authorities (DLSAs) function with minimal staff and rely heavily on temporary volunteers. Legal-aid counsels receive low compensation, leading to a lack of motivation and inconsistent quality of representation. Although the Eleventh Finance Commission suggested dedicated funds for Gram Nyayalayas, the implementation has been alarmingly poor (Law Commission, 2018).

The deficits in infrastructure are equally severe: courts often lack permanent facilities, there is inadequate internet access, translation services are missing, and security measures are minimal. Such material shortcomings not only cause delays in justice but also erode public trust in government institutions.

F. The Confidence Gap

Possibly the most abstract yet significant obstacle is the trust gap between rural residents and the formal legal system. Prolonged experiences of exclusion, delays, and perceived partiality have diminished faith in judicial processes. Alternative dispute-resolution mechanisms—whether caste panchayats or village elders—often serve as the primary sources of justice for many, despite their intrinsic inequities. Without efforts from legal institutions to restore credibility through increased accessibility, expedited processes, and fairness, the quest for justice will persist outside the constitutional framework.

In conclusion, the structural shortcomings of rural justice delivery are not simply administrative but fundamentally systemic. They highlight a disparity between constitutional ideals and the realities of institutions. The ongoing existence of social hierarchies, legal illiteracy, and fragmented governance ensures that justice remains a privilege for the few rather than a right for all. Therefore, tackling these structural barriers is crucial for unlocking the developmental potential of law in rural India.

IV. Reforms and Policy Innovations

The ongoing existence of institutional and social obstacles within India's rural justice system highlights the pressing necessity for comprehensive reform. This reform should extend beyond simple procedural adjustments to fundamentally redefine how justice is perceived, administered, and intertwined with rural governance. The aim is not only to broaden the accessibility of legal institutions but also to integrate them within the developmental framework of rural communities[13]. This requires a three-pronged approach: technological advancement, community engagement, and institutional alignment.

A. Digital Legal-Aid and E-Justice Platforms

The digital transformation of governance presents a distinctive opportunity to make justice more accessible to all. The experiences during the pandemic showed that technology can facilitate justice in a quicker, cheaper, and more inclusive manner when it is designed with fairness in focus. The Nyaya Bandhu (Pro Bono Legal Services) App, initiated by the Ministry of Law and Justice, enables individuals to connect with volunteer lawyers through their mobile devices. Nevertheless, its current usage is largely confined to urban areas. Broadened outreach of such platforms in regional languages, featuring voice-based and offline functionalities, could greatly enhance access for rural populations[14].

Likewise, the success of virtual Lok Adalats responsible for resolving over 1.2 million cases in 2022 (NALSA, 2023) demonstrates the potential for digital dispute resolution. Institutionalizing these as e-Gram Nyayalayas, linked with Panchayat networks and Common Service Centres (CSCs), would create a blended justice model that fuses technology with community involvement. Additionally, establishing a National Justice Data Grid for Rural Courts could promote transparency, facilitate performance tracking, and support data-informed policy measures[15].

However, digitalization must not worsen exclusion. The design of technology should focus on accessibility for low-income, low-literacy populations by integrating mobile voice interfaces, assisted kiosks, and content in local languages. Ultimately, digital justice must prioritize those on the margins, rather than simply reflecting urban realities.

B. Strengthening Community-Based Paralegal Networks

A justice system that aims for inclusivity needs to empower citizens to be active contributors, rather than merely passive recipients. Community paralegals trained local volunteers who possess basic legal knowledge can act as intermediaries between individuals and formal

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[13] Bhatia, R. (2022). *Local Governance and Access to Justice in Rural India.* Indian Journal of Public Administration, 68(3), 415–431.
[14] Government of India. (2008). *The Gram Nyayalayas Act, 2008.* Ministry of Law and Justice
[15] Law Commission of India. (2018). *Report No. 245: Gram Nyayalayas – Justice at the Doorsteps*

institutions. The NALSA (Paralegal Volunteers) Scheme of 2010, while effective in certain districts, remains largely underused on a national scale.

Incorporating paralegal training into Self-Help Groups (SHGs), youth organizations, and Panchayat committees would utilize existing community frameworks. These volunteers can aid in drafting grievances, guiding mediation, and providing legal information. In nations like the Philippines and South Africa, community paralegals have significantly transformed rural justice systems[16]. Their establishment in India could spark a similar grassroots movement towards legal empowerment.

Moreover, including paralegal volunteers within Gram Nyayalayas and DLSAs would establish a support continuum from awareness to adjudication. Paralegals could also play a role in legal literacy initiatives, particularly aimed at women and marginalized groups, ensuring that justice is not only accessible but also within reach.

C. Integrating Justice with Panchayati Raj Governance

To ensure that justice delivery is genuinely participatory, it must be embedded within current local governance structures. The 73rd Constitutional Amendment established Panchayati Raj Institutions (PRIs) as the foundation of decentralized development. However, justice has remained somewhat disconnected from local governance.

Embedding Access to Justice Indicators into the Gram Panchayat Development Plans (GPDPs) would help close this gap. Panchayats could keep Justice Registers to monitor local disputes, referrals to Gram Nyayalayas, and outcomes of legal aid efforts. Establishing dedicated Legal-Aid Desks within Panchayat offices could serve as initial points of contact for grievance resolution, digitally linked to the closest DLSA or Nyayalaya.

This kind of institutional integration would not only strengthen accountability but also transform justice from a reactive measure into a proactive governance tool. Panchayat-level planning sessions could evolve into forums for discussion where social justice priorities—such as gender equity, land rights, or labor welfare—are woven into local development plans.

D. Institutional and Financial Reform

[16] Mehta, P. (2023). *Digital Justice Delivery in India: Evaluating Virtual Courts and Lok Adalats*. Journal of Law and Technology, 15(2), 210–234.

Sustainable legal access hinges on reliable financing and accountability within institutions. Historical insights from the Eleventh and Fourteenth Finance Commissions indicate that one-time funding is inadequate. Both Union and state governments should implement a performance-based funding model, distributing resources according to measurable metrics like case resolution rates, citizen satisfaction, and outreach efforts.

In addition, it is crucial to integrate Gram Nyayalayas into the e-Courts Mission Mode Project, ensuring they are compatible with district and high courts. This would standardize data, enhance oversight, and decrease backlog[17]. Hiring specialized judicial officers for Gram Nyayalayas, along with regular audits by High Courts, could rejuvenate these entities as trustworthy venues for initial legal proceedings.

Capacity building is equally critical. Judicial officers assigned to rural regions need focused training in community engagement, mediation, and gender-sensitive decision-making. Concurrently, local officials and Panchayat representatives should be educated about their supportive roles in delivering justice.

E. Legislative and Policy Coherence

Lastly, achieving lasting reform requires alignment among the various laws and policies that currently function in isolation. The Gram Nyayalayas Act, Legal Services Authorities Act, and Panchayati Raj Acts should be synchronized through amendments or executive orders that clarify jurisdictional connections. Establishing a National Framework for Rural Justice Delivery under the aegis of the NITI Aayog or Ministry of Rural Development—could unify initiatives, set norms, and assess results across different states.

Such alignment would also resonate with India's international obligations under the UN Sustainable Development Goal 16, which advocates for "peace, justice, and strong institutions." By embedding justice within governance principles, India would progress toward realizing the constitutional promise of equality and the developmental vision of Viksit Bharat 2047[18].

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[17] NALSA. (2023). *Report on Lok Adalats and Legal Aid Clinics*. National Legal Services Authority.
[18] UNDP. (2022). *Human Development Report 2022: Uncertain Times, Unsettled Lives*. United Nations Development Programme.

The suggested reforms collectively reconceptualize justice as an instrument of empowerment rather than mere adjudication. By merging technology, community involvement, and governance collaboration, the aim is to transform the justice system from sporadic outreach to systemic inclusivity an essential shift for justice to be genuinely experienced by rural India.

V. Advancing a Rights-Based Model of Developmental Justice

The earlier analysis shows that the rural justice system in India is not only hindered by bureaucratic stagnation but also by a more profound conceptual error: justice continues to be perceived as a supplementary service instead of an essential aspect of development. A rights-based model of developmental justice aims to amend this misunderstanding by recognizing access to justice as both a constitutional right and a developmental priority[19]. It shifts the emphasis from the distribution of welfare to the empowerment of rights-holders individuals and communities who can demand accountability from the State.

Fundamentally, the rights-based approach is built upon three interconnected principles: justiciability, participation, and accountability. Justiciability means that the opportunity to seek remedies should not be contingent upon generous discretion but should be rooted in enforceable rights. The Constitution, specifically through Articles 14, 21, and 39A, already establishes the normative basis for such enforceability. However, in practice, rural citizens face overwhelming procedural and financial obstacles. Integrating these guarantees into local institutions like Gram Nyayalayas, legal-aid centers, and Panchayat justice desks turns abstract rights into concrete tools for empowerment.

Participation acknowledges that the process of delivering justice cannot be exclusively controlled by formal courts. Community involvement through paralegal volunteers, women's self-help groups, and Panchayat-level mediation returns agency to those who have been historically marginalized in legal proceedings[20]. This involvement also broadens the knowledge base of law, ensuring that legal decisions reflect local realities rather than remote bureaucratic standards. When communities take part in justice delivery, compliance improves, legitimacy strengthens, and the law transforms into a social norm rather than an outside imposition.

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[19] NITI Aayog. (2023). *Vision Document for Viksit Bharat @2047*. Government of India.

[20] Nussbaum, M. (2011). *Creating Capabilities: The Human Development Approach*. Harvard University Press.

Accountability completes this triad. A rights-based framework evaluates the effectiveness of justice institutions not by the volume of cases filed or resolved but by how much they promote fairness, accessibility, and public confidence[21]. This necessitates incorporating justice indicators into India's development assessments. Adding factors like case-resolution time, legal-aid access, and grievance-redress effectiveness into the Multidimensional Poverty Index (MPI) or District Development Plans would highlight the distributive aspect of justice. The UNDP's Human Development Reports (2022) have already recognized access to justice as crucial for effective governance; India's policy structure can implement this understanding by linking legal inclusion with socio-economic advancement.

Such connection also aligns with global objectives under Sustainable Development Goal 16, which advocates for "peace, justice, and strong institutions." Developmental justice thus serves as the national interpretation of SDG 16 within the rural context of India. It closes the divide between legal formalism and social equity by converting the constitutional promise of justice into quantifiable development results.

In the end, a rights-based model reconceptualizes justice not as the final point of conflict but as a continual process of enhancing capabilities. It redefines legal institutions as venues of empowerment where citizens gain skills to negotiate, engage, and assert their dignity. For rural India, this change is essential: only when justice becomes a developmental asset—integrated into governance, financed as a public service, and evaluated as a capability can the aspirational vision of Viksit Bharat 2047 move beyond mere rhetoric and become a tangible constitutional reality[22].

VII. Conclusion

The ability to seek justice is fundamental to constitutional democracy and essential for fair development. In rural areas, justice is not merely a benefit but a crucial factor influencing empowerment, governance quality, and human dignity. The analysis presented shows that India's rural justice system—while grounded in strong principles—remains fundamentally unfulfilled. The Gram Nyayalayas Act of 2008 and the Legal Services Authorities Act of 1987 reflect a legislative effort to democratize access to justice, but their execution has been

[21] Sen, A. (1999). *Development as Freedom.* Oxford University Press

[22] NITI Aayog. (2023). *Vision Document for Viksit Bharat @2047.* Government of India.

hampered by institutional stagnation, social hierarchies, and lack of resources. As a result, the constitutional guarantee of equal justice continues to be a promise unfulfilled for those in greatest need.

A significant change is required: justice should be woven into the very fabric of development rather than regarded as an ancillary issue. Adopting a rights-based perspective, rooted in justiciability, participation, and accountability, reinterprets access to justice as both a method and a goal for rural transformation. This approach guarantees that every individual, irrespective of their location or status, not only has the theoretical right to be heard but also the practical means to seek redress.

The reforms suggested in this study digitizing legal aid, empowering paralegal networks, fostering collaboration between Panchayats and the judiciary, and linking funding to performance demonstrate that justice can extend beyond the confines of courts. When effectively institutionalized, these strategies can turn constitutional principles into tangible developmental achievements. Incorporating justice indicators into India's policy frameworks, including the Multidimensional Poverty Index and Gram Panchayat Development Plans, would meaningfully and symbolically embed the rule of law into the country's development initiatives.

The vision of Viksit Bharat 2047 calls for not just advancements in infrastructure and economy, but also a profound ethical and institutional revitalization of justice. A rural India wherein citizens can assert their rights confidently, resolve conflicts with dignity, and trust the integrity of institutions will embody the true essence of constitutional democracy. The full realization of development begins when justice is not merely an ideal, but a guarantee experienced in everyday life.

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RESEARCH ARTICLE

Guardians of Justice: Tracing Powers of the State Machinery under the Bharatiya Nagarik Suraksha Sanhita (BNSS)

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Abstract

The passing of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) is undoubtedly a benchmark in the legal landscape of India. Procedural law lays down the means to attain justice envisaged by substantive law. Hence, it's more significant. This research paper provides a thorough examination of the key provisions of the BNSS that deal with the executive machinery that has to ensure that the administration of justice is met by working in the intersection of the protection of the objects of public law as well as executing judicial orders. This study offers a comprehensive analysis of the aspects relating to the collection of evidence, emphasizing the admissibility of evidence collected by retired and transferred police officers, police custody and its effects on bail, attachment of property, and other aspects of procedural law.

Keywords: Criminal Procedure; Executive; Police; Evidence; Magistrate; Custody

The penal laws in any state draw significance owing to their utility as an instrument of social control in the course of enforcing its objectives of imposing deterrence, promoting the reformation of an offender or compensating the victim depending on the jurisdiction and the application jurisprudence of criminal law. Considering that it is not the prerogative of the criminal to submit himself to an enforcement agency or the judicial process, a procedural law is required to enforce and process the rights of the accused and the aggrieved throughout the investigation process leading to the establishment of guilt or innocence. The law on criminal procedure is sine qua non to any criminal justice system and renders the substantive penal laws ineffective in case it is not applied or is misplaced. Broadly, it consists of matters relating to the apprehension and arrest of an accused, discovery and collection of evidence, and determination of guilt or innocence as well as provisions on penalty and sentencing. The erstwhile law applicable in this respect was the Code of Criminal Procedure, 1973[2] ("**CrPC, 1973**"). This law was the successor to the Code of Criminal Procedure, 1861[3] ("**CrPC, 1861**") which was originally introduced to unify the criminal legal system in India. The extant jurisprudence of criminal procedure applicable in the jurisdiction is one formulated out of joint efforts of the legislature- by way of various reforms brought through amendments over the years as well as the vigilance exercised by the judiciary such as in the landmark cases of *D.K. Basu*[4] and *Hussainara Khatoon*[5]. In August 2023, the Bharatiya Nagarik Suraksha Sanhita[6] ("**BNSS**") was introduced to replace the CrPC, 1973 which has been notified to come into force from July 1, 2024. The law has been brought with the view of reforming the provisions on bail, attachment of property, and powers of investigation of the police, magistrate and other law enforcement machinery. Among other highlights and hindrances brought by the new legislation, this paper aims to outline the powers of investigation exercised by various authorized limbs of the executive and the changes in the mandate of the same and its implications moving forward.

Investigation into an offence and its facets is arguably the most important stage in the course of the administration of justice. Any default in the collection of material evidence, tampering with evidence or destruction of evidence could have far-reaching adverse implications including but not limited to delay in proceedings, incorrect findings from the investigation, transfer of case from one executive machinery to another and in most cases acquittal of the accused when the prosecution is unable to prove the guilt beyond a reasonable doubt due to the destruction or the absence of crucial pieces of evidence. In Indian jurisdiction, we have been witness to several of these cases such as the *Aarushi Talwar*[7] case, the *Abhaya*[8] case and the *Manu Sharma*[9] case to name a few.

It is also crucial to note that the credibility of the outcome of the evidence is largely based on the credibility of the investigation agency itself. The Apex Court has time and again stressed the sacrosanct role of investigation agencies and reprimanded them for inflicting third-degree treatment on the accused and witnesses to doctor their accounts, tutoring witnesses and tampering with evidence[10]. While furtherance of political will and corruption are tacit evils that influence executive functions, another paradigm of fair investigation involves the proper collection of evidence. A larger chunk of criminal cases in the past remained unsolved owing to the technology in this sphere being largely obsolete. The dip in crime rates with the accession of the technological revolution in the twenty-first century is a testament to this assertion[11]. This paper aims to consolidate and analyze the various changes made to the powers of the investigative agencies under the BNSS.

POLICE PROVISIONS

Rules regarding Arrest

Although most of the provisions relating to arrest under the erstwhile law have been retained under Chapter V of the BNSS, certain provisions depart from the language as well as settled propositions under the previous law. Section 35[12] of the BNSS provides that for offences punishable for a period of less than 3 (three) years or if the arrest is of an infirm person or a person above 60 (sixty) years of age, an officer not below the rank of Deputy Superintendent of Police must grant prior permission for the same. Further, under Section 43(3)[13] of the BNSS, the police officer may keep in view the nature and gravity of the offence while making an arrest or while producing such a person who is a habitual or repeat offender or a person who has escaped from custody or has committed an organised crime or an act of terrorism or drug-related offences or rape or acid attack or was in illegal possession of arms or is alleged to have committed counterfeiting of notes and coins or sexual offences against children or offence against the State before a court can use handcuffs in the course of the same. This provision is in direct contradiction with the view of the Apex Court in *Prem Shankar Shukla v. Delhi Administration*[14] in which it was laid that the classification of prisoners into better classes and ordinary classes for the purpose of handcuffing was 'strange, unconscionable and outrageous'. The Court further observed that the reasons for handcuffing must be communicated 'contemporaneously' and the authorised officers should not take recourse to a 'mindless mechanical process' which puts an undertrial in a state where he is bound hand and feet with hoops of steel, shuffled around the streets with his dignity defiled. The aforesaid provision is also in contravention of the "*Guidelines regarding Arrest*"[15] issued by the National Human Rights Commission.

Detention in Custody

The Supreme Court has time and again emphasised the personal liberty of the individual, its scarce deprivation only in case there is a procedure established by law and rights against preventive detention in accordance with the letter of the law enshrined under Article 21[16] and Article 22(2)[17] of the Constitution of India ("**the Constitution**"). On a precursive reading of Section 187(2)[18] of the BNSS, a deviation from the original provision enshrined under Section 167(2)[19] of the CrPC is found. The relevant rule is that the period of detention can be extended if the investigation cannot be completed within twenty-four hours after submitting copies of the entries to the case diary to the nearest judicial magistrate. The first deviation is the requirement of the Magistrate to take into consideration if the accused has been granted bail or if his/her bail has been cancelled. It is relevant to bear in mind that in the case of most offences, the "nearest magistrate" is not the "jurisdictional magistrate" and it is settled that only the jurisdictional magistrate can grant bail to the accused[20], a view that has been modified in *Sundeep Kumar Bafna v. State of Maharashtra & Anr*[21] to permit the even High Courts to entertain petitions of bail. Therefore, such considerations should not hold relevance or good ground for the "nearest magistrate" to remand a person to "police custody" or "judicial custody".

The second and immediate deviation made under Section 187(2) of the BNSS is that under the erstwhile law, the magistrate had the power to remand every person arrested to "police custody" only for the first 15 (fifteen) days of remand[22]. The aforementioned fifteen days could also be for broken periods that is, custody at different intervals amounting to fifteen days. Any further extensions for remand could only be applied to judicial custody[23]. In the recent case of *Senthil Kumar Balaji v. State represented by Deputy Director & Ors.*[24], the Apex Court observed that "the upper limit of remand of fifteen days in police custody applies to the total duration of investigation of 60 (sixty) days or 90 (ninety) days as a whole. Under the new law, the "nearest magistrate" can order for police custody for a term not exceeding fifteen days in whole or in part during the first 40 (forty) days if the period of investigation is 60 (sixty) days or the first 60 (sixty) days if the period of investigation is 90 (ninety) days. There is no safeguard placed under the aforesaid provision that the period of police custody shall be ordered only for a cumulative of fifteen days during the total period of sixty or ninety days of detention[25]. This provides sufficient cause to ascertain that the said provision is likely to be abused by the police and other investigative agencies[26]. The object of extending the duration of custody of the accused to sixty or ninety days under the erstwhile Section 167(2) was not to further the whim of an investigative agency to indefinitely continue the investigation and hence, the new law in this regard is in contravention of the principle enshrined under Article 22(2) of the Constitution. In *Sheela Barse v. State of Maharashtra*[27]*,* the Court reiterated its position in *Sunil Batra* that police lockups are havens for torture and unreasonable deprivation of personal liberty while adjudicating on the extension of the permissible duration for police custody.

Finally, Section 187(5) designates "police station" as the place for police custody and "prison" as the place for judicial custody. While the former part of the provision does not further any particular object as the purpose of police custody is to facilitate investigation and not confine a person within the police station, the latter part of the provision relating to judicial custody is redundant as the same is covered under Section 457[28] of the BNSS (corresponding to Section 417[29] of the CrPC).

Application for Attachment and Seizure of Property

Under Section 86[30] of the BNSS, the Court may on an application made by a police officer, who is not below the rank of Superintendent of Police or Commissioner of Police commence the process of attachment and forfeiture of assets of a proclaimed offender. On the other hand, Section 107[31] provides for attachment and forfeiture of property obtained out of criminal activity by way of an application made by a police officer with the approval of the Superintendent of Police. It also provides for the proportionate distribution of such property if the Court makes a finding that the property was in fact a proceed of crime as defined under Section 111[32] of the BNSS (corresponding to Section 2(u)[33] of the Prevention of Money Laundering Act, 2002 ("**PMLA**")). The aforesaid provision is similar to Section 5[34] of the PMLA[35]. However, the provision under the BNSS does not afford the same safeguards. Firstly, the attachment under PMLA is provisionally up to 180 (one hundred and eighty) days whereas there is no ceiling on the duration for which the property may be seized under the BNSS. The period of notice to show cause as to why the property is not to be attached as a proceed of crime is 30 (thirty) days under the PMLA whereas the BNSS only affords a period of 14 (fourteen) days for the same[36].

INVESTIGATION

Preliminary Enquiry

The concept of 'preliminary enquiry' was not envisaged under Section 154[37] of the CrPC as a mandatory stage of investigation. The position on the same was clarified in *Lalitha Kumari v. Government of Uttar Pradesh and Ors.*[38]. It was observed that preliminary enquiry was only necessary in cases which required registration of the First Information Report ("**FIR**") e.g. cases of medical negligence, matrimonial disputes, etc. Even in such cases, such preliminary enquiry was to be conducted only to ascertain if the information discloses the commission of a cognizable offence. Section 173(3)[39] expressly provides for such an enquiry on obtaining prior permission from the Deputy Superintendent of Police to determine if a *prima facie* case is made or not. The implications of setting up such a process are that it renders unfairness to complainants against offences punishable with imprisonment between three to seven years. Such complainants would have to prefer an application to the magistrate or file a private complaint. The Bharatiya Nyaya Sanhita[40] ("**BNS**") presently consists of over 98 offences which are punishable with the aforesaid range of imprisonment providing great scope for abuse of power by an investigating officer in determining whether a prima facie case is made to warrant the registration of a FIR, a power which was previously conferred upon criminal courts[41]. This is a significant consideration bearing in mind that crimes ranging from theft to acts affecting religious sentiments fall within the same bracket. In *State of Gujarat v. Shyamlal Mohanlal Choksi*[42], it was observed that directing an "inquiry" came under the monopoly of the Magistrate and not the Police. In *P. Sirajuddin v. State of Madras,* it was observed that conferring unfettered powers to one public servant to proceed against another public servant in the context of corruption cases could harm the latter against whom there would already be 'disgruntled elements' waiting to launch 'vexatious prosecutions[43]'.

Another significant procedural issue arising out of the same stems from the lack of a FIR as of the date of the preliminary enquiry. Firstly, it is in direct contradiction with the decision of the Apex Court in the case of *Youth Bar Association of India*[44] which established the right of the accused to access a copy of the FIR at a stage earlier than that prescribed under Section 207 of the CrPC[45]. Secondly, it creates confusion as to whether a person to whom a notice or summons has been issued is being summoned as a witness or as an accused.

Medical Examination

Section 51[46] of the BNSS provides that a person can be medically examined by a medical practitioner on a request by 'any police officer' if there are reasonable grounds to believe that the examination of the person will provide evidence as to the commission of any offence. This waters down the requirement under the corresponding Section 53[47] of the CrPC which provides that such a request shall only be made by an individual not under the rank of a sub-inspector. Such watering-down expands the ambit of the category of police officers across seniority and skills who can request such examination. This could lead to perils of improper handling of evidence which is intrinsic to an individual's privacy if the police officer is not sufficiently equipped with the skill, experience or training to handle the same. Since the evidence in the present context is of a private nature, there could be far-reaching adverse implications on the right to privacy of the accused which has been upheld in landmark decisions[48] of the highest court of the land.

Under the extant procedure, an arrestee is to be medically examined by a medical officer or a registered medical practitioner upon arrest. Further, if the arrestee is female, she is to be examined by a female medical officer or female registered medical practitioner. The provision relating to this under Section 54[49] of the erstwhile law is reproduced as it is under Section 53 of the new law apart from an additional proviso which has been introduced under BNSS. This additional proviso provides discretionary powers to the registered medical practitioner to render an opinion for another medical examination. This is a deviation from the current proposition which is derived from the D.K. Basu Guidelines which require medical practitioners to medically examine the arrestee in custody once every 48 (forty-eight) hours.

Proving of 'Document' or 'Report' by a successor officer

Under Section 336 of the BNSS[50], the successor-in-office of a public servant, scientific expert or medical officer can be called upon by the Court to depose on the 'Document' or 'Report' prepared by the preceding public servant who is dead, has been transferred, has retired, is incapable of deposing or securing the attendance of person shall cause delay in proceedings. This provision is only applicable in cases where such 'Document' or 'Report' has been disputed[51]. The primary issue in this regard is the lack of clarity as to whether the aforesaid provision would override or replace Section 41(1) of the Bharatiya Sakshya Adhiniyam[52] ("**BSA**") which corresponds to Section 47 of the Indian Evidence Act[53] (IEA). The ancillary issues that arise in this regard in the lack of specificity regarding the types of documents and reports covered under this ambit. While the admissibility of such material is a proposition for the laws of evidence, the law does not clarify the nature of transfer or retirement as well. Courts have raised caveats in the past about depositions of retired police officers on the cases they have investigated while in service. The judicial opinion in this regard is that the Courts cannot remain a silent spectator in allowing such a retired police officer to depose anything and everything, especially in cases where an unholy alliance with the accused is speculated beforehand[54].

CONCLUSION

Through this paper, the authors intend to circle out peculiar improprieties and prospective legal and enforcement issues that may arise out of the Pandora's box coming into force which is the BNSS. The object is to re-centre focus on contentious aspects of the law on criminal procedure while the discussion in the mainstream largely revolves around the substantive law. While the State floats the new laws with a view of putting an end to colonial mentality, it is pertinent to realise that unlike the Indian Penal Code[55] (IPC) or the Indian Evidence Act, the CrPC in force as of the day of writing this paper is not from the Macaulayan era. It was the outcome of consultations with the judges of all the high courts of independent India and the work of half a dozen Law Commissions who worked intensively from 1961 till it became law in 1974. One must bear in mind that the issues raised above do not merely cause inconvenience to parties but also have a chilling effect on the personal liberty of an individual. While some of the observations showcase a deviation from an existing legislative position derived from the words of the Statute, most of them are in contravention of various directions and decisions of the Apex Court. At this juncture, it would only be appropriate to wait for the Courts to take judicial notice and mull over the likelihood of amiability to amendments.

Footnotes

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RESEARCH ARTICLE

Artificial Intelligence in Corporate Governance: Legal Challenges and the Need for a Robust Regulatory Framework in India

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Abstract

Artificial Intelligence (AI) has become one of the most influential technological innovations shaping the modern corporate sector. Business organisations increasingly rely on AI-driven systems to improve operational efficiency, strengthen risk management, enhance regulatory compliance, and support strategic decision-making. While AI offers significant advantages, its growing role in corporate governance has also generated important legal and ethical concerns. Issues relating to accountability, transparency, algorithmic bias, cybersecurity, and data protection continue to challenge existing legal frameworks. India's corporate governance regime, governed primarily by the Companies Act, 2013, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, and the Digital Personal Data Protection Act, 2023, provides general standards for corporate responsibility but does not specifically regulate AI-assisted governance. This article examines the emerging relationship between Artificial Intelligence and corporate governance in India, analyses the legal challenges arising from AI adoption, evaluates the adequacy of the present regulatory framework, and compares international approaches. It argues that India should adopt a comprehensive and risk-based regulatory framework capable of promoting innovation while ensuring accountability, transparency, ethical decision-making, and effective protection of stakeholder interests. Such a framework would strengthen corporate governance and contribute to responsible technological development in the country's rapidly expanding digital economy.

Keywords: Artificial Intelligence; Corporate Governance; Companies Act; Digital Personal Data Protection Act; Corporate Accountability; AI Regulation; Corporate Law; Data Privacy

Artificial Intelligence has transformed the manner in which businesses operate across the world[1]. Technological advancements in machine learning, data analytics, and automation[2] have enabled organisations to perform complex tasks with greater speed, efficiency, and accuracy than ever before. Companies now employ AI not only for routine operational activities but also for functions involving strategic planning, financial analysis, compliance monitoring, fraud detection, cybersecurity, customer relationship management, and business forecasting. Consequently, Artificial Intelligence has emerged as an important component of modern corporate governance.

Corporate governance refers to the system through which companies are directed, managed, and supervised. It establishes standards of accountability, transparency, fairness, responsibility, and ethical conduct for directors and management while safeguarding the interests of shareholders, employees, creditors, consumers, regulators, and society. Sound corporate governance contributes to investor confidence, sustainable economic growth, and long-term organisational success.

The integration of Artificial Intelligence into corporate governance has introduced significant opportunities for improving efficiency and strengthening regulatory compliance. AI-powered technologies assist boards of directors in analysing complex business information, identifying financial risks, monitoring legal compliance, and supporting informed decision-making. Through predictive analytics and automated monitoring systems, organisations are able to reduce operational costs, minimise human error, and respond more effectively to changing business conditions.

Despite these advantages, the growing reliance on Artificial Intelligence has also created several legal and ethical concerns. AI systems frequently operate through complex algorithms that may not be fully transparent or easily understood by directors, regulators, or stakeholders. When an AI-generated recommendation results in financial loss, discriminatory practices, or regulatory violations, determining legal responsibility becomes increasingly difficult. Questions concerning algorithmic bias, privacy protection, cybersecurity, accountability, and explainability continue to challenge existing legal systems across the world.

India has recognised the importance of Artificial Intelligence through various legislative and policy initiatives. The Companies Act, 2013 establishes standards relating to directors' duties[3] and corporate governance, while the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[4] promote transparency and accountability among listed companies. The Digital Personal Data Protection Act, 2023[5] further strengthens the legal framework governing the collection and processing of personal data. In addition, initiatives such as the National Strategy for Artificial Intelligence and the IndiaAI Mission demonstrate India's commitment to encouraging responsible technological innovation. However, these measures do not comprehensively regulate the use of AI in corporate governance or address the unique legal issues arising from AI-assisted corporate decision-making.

As Artificial Intelligence becomes increasingly integrated into corporate management, there is a pressing need for a legal framework that balances innovation with accountability. Effective regulation should ensure that AI enhances corporate governance without compromising transparency, ethical standards, or stakeholder rights. Such a framework must also provide legal certainty for companies while promoting responsible technological development.

This article critically examines the role of Artificial Intelligence in corporate governance, analyses the legal challenges associated with its adoption, evaluates the existing Indian legal framework, compares international regulatory approaches, and proposes recommendations for developing a comprehensive AI governance framework suited to India's corporate and technological landscape.

Understanding Artificial Intelligence and Corporate Governance

Artificial Intelligence refers to computer-based systems capable of performing tasks that normally require human intelligence[6]. These tasks include learning from data, recognising patterns, making predictions, solving problems, understanding language, and supporting decision-making. Unlike traditional software, AI systems continuously improve their performance through experience and data analysis, making them valuable tools for businesses operating in competitive and data-intensive environments.

Corporate governance refers to the framework of laws, policies, practices, and institutional mechanisms through which companies are managed and controlled. It seeks to ensure responsible decision-making, accountability of directors, protection of stakeholder interests, transparency in financial reporting, and compliance with legal obligations. Effective corporate governance enhances investor confidence[7] and contributes to the long-term sustainability of business organisations.

The relationship between Artificial Intelligence and corporate governance has evolved significantly over the past decade. AI is increasingly being integrated into governance mechanisms to improve financial analysis, monitor compliance, detect fraudulent transactions, manage business risks, evaluate investment opportunities, and support strategic planning. These technologies enable organisations to process large volumes of information with greater speed and accuracy than conventional decision-making methods.

However, Artificial Intelligence should not replace human judgment in matters involving corporate governance. Directors continue to owe fiduciary duties to the company and remain legally responsible for decisions taken by the organisation. AI should therefore function as a decision-support mechanism rather than an autonomous decision-maker. Human oversight remains essential to ensure that technological efficiency does not compromise ethical standards, legal compliance, or stakeholder interests.

The growing dependence on AI demonstrates that corporate governance is entering a new technological era. At the same time, this transformation requires legal safeguards capable of ensuring that AI systems operate in a transparent, accountable, and responsible manner.

Role and Benefits of Artificial Intelligence in Corporate Governance

The increasing adoption of Artificial Intelligence has significantly transformed the manner in which companies perform governance functions. Modern corporations generate enormous volumes of financial, operational, legal, and commercial information every day. Processing such data manually is often time-consuming and susceptible to human error. Artificial Intelligence enables organisations to analyse complex datasets rapidly, identify patterns, predict risks, and provide valuable insights that support corporate decision-making. Consequently, AI has become an essential governance tool rather than merely a technological innovation[8].

One of the most important contributions of AI is its ability to improve corporate decision-making. Boards of directors are required to make strategic decisions[9] concerning investments, mergers, acquisitions, financial planning, and regulatory compliance. AI-powered analytical tools can process market trends, financial reports, and operational data within a short period, enabling directors to make more informed and evidence-based decisions. Although the final responsibility continues to rest with human decision-makers, AI enhances the quality and efficiency of corporate governance by providing reliable analytical support.

Artificial Intelligence also strengthens corporate risk management. Every business faces financial, operational, legal, environmental, and reputational risks that require continuous monitoring. AI systems are capable of identifying unusual patterns, predicting potential risks, and issuing early warnings before problems become serious. This proactive approach enables companies to adopt preventive measures, thereby reducing financial losses and improving organisational resilience.

Another important benefit of AI is its contribution to regulatory compliance. Companies are required to comply with numerous statutory obligations relating to corporate governance, taxation, labour laws, environmental protection, securities regulation, and financial reporting. AI-powered compliance systems continuously monitor regulatory requirements, identify potential violations, and generate alerts regarding statutory deadlines or reporting obligations. Such automation reduces the possibility of inadvertent non-compliance while improving the overall efficiency of corporate governance.

Artificial Intelligence has also enhanced fraud detection and internal audit mechanisms. Corporate fraud frequently involves sophisticated financial transactions that are difficult to detect through conventional auditing methods. AI systems analyse financial records in real time, identify suspicious transactions, and detect anomalies that may indicate fraudulent activities. Early detection enables organisations to investigate irregularities promptly, strengthen internal controls, and protect stakeholder interests.

Cybersecurity has become another important area in which AI contributes significantly. As companies increasingly depend upon digital infrastructure, the risk of cyberattacks has also grown substantially. AI-based cybersecurity systems monitor network activities continuously, detect suspicious behaviour, and respond to potential security threats with greater speed than traditional security mechanisms. Such capabilities assist organisations in protecting confidential corporate information and maintaining business continuity.

Artificial Intelligence further improves stakeholder engagement and customer services. Companies utilise AI-powered chatbots, automated communication platforms, and predictive customer support systems to respond efficiently to shareholder queries, customer complaints, and investor concerns. Improved communication promotes transparency and strengthens stakeholder confidence in corporate governance practices.

AI also contributes to environmental, social, and governance (ESG) reporting. Increasingly, investors evaluate companies not only on financial performance but also on sustainability and ethical governance. AI enables organisations to collect, analyse, and report ESG-related information more efficiently, thereby improving the accuracy of sustainability disclosures and enhancing investor confidence.

Despite these advantages, Artificial Intelligence cannot replace human judgment. Corporate governance requires ethical reasoning, legal interpretation, and fiduciary responsibility, which remain fundamentally human functions. AI systems operate on the basis of data and algorithms and may not fully appreciate broader social, ethical, or legal implications. Therefore, directors should treat AI as an advisory tool rather than an independent decision-maker.

The successful integration of Artificial Intelligence into corporate governance depends upon achieving an appropriate balance between technological innovation and human oversight. Organisations that implement AI responsibly are likely to benefit from improved efficiency, stronger compliance, better risk management, enhanced transparency, and sustainable corporate growth. However, these benefits can only be realised when AI systems operate within a robust legal and ethical framework that safeguards stakeholder interests and promotes responsible corporate conduct.

Legal Challenges of Artificial Intelligence in Corporate Governance

Although Artificial Intelligence offers numerous advantages, its growing use within corporate governance has created several legal challenges. Existing legal frameworks were developed primarily to regulate decisions made by human beings[10] and therefore provide limited guidance regarding AI-assisted governance. The absence of clear legal standards creates uncertainty concerning accountability, liability, transparency, privacy, cybersecurity, and ethical responsibility.

One of the most significant legal challenges concerns accountability for AI-assisted decisions. Directors owe fiduciary duties to the company and are expected to exercise reasonable care, skill, and diligence while making corporate decisions. However, where a decision is based upon recommendations generated by Artificial Intelligence, determining responsibility becomes considerably more complex. If an AI system produces inaccurate financial predictions, discriminatory recommendations, or incorrect compliance assessments, questions arise regarding whether liability should rest with the directors, the company, or the developers of the AI technology.

Another major challenge relates to data privacy and protection. Artificial Intelligence functions by processing large quantities of personal and commercial data[11], including employee records, customer information, financial statements, and confidential business documents. Improper handling of such information may result in privacy violations, unauthorised disclosures, identity theft, and regulatory penalties. Although India's Digital Personal Data Protection Act, 2023 establishes important safeguards for personal data, it does not specifically regulate the governance-related use of AI or algorithmic decision-making.

Algorithmic bias represents another significant concern[12]. AI systems learn through historical data, and if that data contains social or organisational bias, the resulting decisions may also become discriminatory. Bias may influence recruitment, employee promotions, lending decisions, insurance assessments, or customer profiling. Such outcomes may violate principles of equality, fairness, and ethical corporate governance while exposing companies to legal disputes and reputational damage.

The lack of transparency in AI systems also creates governance challenges. Many AI models function as "black box" systems, producing decisions without explaining the reasoning behind them. Directors, shareholders, regulators, and auditors may therefore find it difficult to understand how important corporate decisions were reached. Since transparency is one of the fundamental principles of corporate governance, this lack of explainability undermines stakeholder confidence and regulatory oversight.

Cybersecurity presents another important legal challenge. AI systems store and process highly valuable corporate information, making them attractive targets for cybercriminals. A successful cyberattack may compromise confidential business information, disrupt corporate operations, and expose companies to substantial financial losses. Boards of directors must therefore ensure that appropriate cybersecurity measures accompany the adoption of AI technologies.

Finally, Artificial Intelligence raises broader ethical concerns. AI lacks human values, moral reasoning, and social understanding. It cannot independently balance competing stakeholder interests or appreciate the ethical consequences of corporate decisions. Consequently, excessive reliance upon AI may weaken human accountability and undermine the principles of responsible corporate governance.

These legal challenges clearly demonstrate that Artificial Intelligence should not operate in a regulatory vacuum. A balanced legal framework is necessary to define responsibility, strengthen transparency, protect privacy, minimise algorithmic bias, and ensure that technological innovation remains consistent with the principles of corporate accountability and good governance.

Indian Legal Framework Governing Artificial Intelligence in Corporate Governance

India has not yet enacted a dedicated statute governing Artificial Intelligence. Nevertheless, several existing laws and regulatory instruments indirectly regulate the use of AI in corporate governance. These laws establish principles relating to corporate accountability, transparency, fiduciary responsibility, data protection, and regulatory compliance. Although these provisions provide a useful legal foundation, they do not comprehensively address the challenges associated with AI-assisted corporate decision-making.

The Companies Act, 2013 serves as the primary legislation governing corporate entities in India. Section 166 of the Act imposes fiduciary duties upon directors[13], requiring them to act in good faith, exercise due care, skill and diligence, and promote the interests of the company and its stakeholders. These duties continue to apply even when directors rely upon Artificial Intelligence while making corporate decisions. AI may assist directors by providing analytical support, but it cannot replace their legal responsibilities. Directors remain accountable for decisions affecting the company irrespective of whether those decisions were influenced by automated systems.

For listed companies, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 strengthen standards of corporate governance by requiring transparency, accurate disclosures, effective risk management, and protection of shareholders' interests. Although these regulations do not specifically regulate Artificial Intelligence, companies using AI must ensure that automated systems comply with existing governance obligations and maintain appropriate human oversight.

The Digital Personal Data Protection Act, 2023 represents another important development relevant to AI governance. Since AI systems depend upon large quantities of personal data, organisations must process such information lawfully and securely. The Act establishes principles relating to lawful processing, purpose limitation, consent, security safeguards, and accountability. However, it does not specifically regulate algorithmic decision-making, automated profiling, or explainability of AI systems used in corporate governance.

Apart from legislation, India has introduced several policy initiatives encouraging responsible AI development. NITI Aayog's National Strategy for Artificial Intelligence emphasises ethical AI, transparency, inclusiveness, and public trust. The IndiaAI Mission also seeks to strengthen research, innovation, infrastructure, and responsible deployment of Artificial Intelligence. Although these initiatives demonstrate India's commitment to technological development, they function primarily as policy documents rather than enforceable legal frameworks.

Therefore, while India's existing legal structure provides important governance safeguards, it does not comprehensively regulate the use of Artificial Intelligence in corporate decision-making. The absence of clear statutory provisions regarding accountability, algorithmic transparency, AI auditing, and liability demonstrates the need for dedicated AI legislation.

Comparative Analysis

Several countries have recognised that Artificial Intelligence requires specialised legal regulation. International developments provide valuable guidance for India while designing its own AI governance framework.

The European Union has adopted the Artificial Intelligence Act[14], which establishes one of the world's first comprehensive legal frameworks for AI regulation. The legislation follows a risk-based approach, classifying AI systems according to the level of risk they present. High-risk AI systems are subject to stricter legal obligations relating to transparency, documentation, human oversight, cybersecurity, and accountability. This approach enables innovation while protecting individuals and businesses from potential harm.

The Organisation for Economic Co-operation and Development (OECD) has also developed internationally recognised AI Principles. These principles promote transparency, accountability, fairness, human-centred values, security, and responsible innovation. They encourage governments and businesses to ensure that Artificial Intelligence remains subject to meaningful human supervision throughout its lifecycle.

Compared with these international developments, India's legal framework remains fragmented[15]. Existing corporate and data protection laws regulate only certain aspects of AI without establishing comprehensive standards for governance, accountability, or transparency. Rather than copying foreign legislation, India should develop a regulatory framework suited to its constitutional values, economic conditions, and rapidly expanding digital economy while adopting internationally accepted principles of responsible AI governance.

Recommendations

The increasing use of Artificial Intelligence within corporate governance requires legal reforms capable of balancing technological innovation with accountability. The following recommendations may strengthen India's regulatory framework.

First, India should enact comprehensive legislation specifically governing Artificial Intelligence. Such legislation should clearly define legal responsibilities of companies, directors, developers, and AI service providers while establishing standards relating to transparency, accountability, fairness, and cybersecurity.

Second, AI should always remain subject to meaningful human oversight[16]. Important corporate decisions involving financial reporting, mergers, acquisitions, compliance, or employment should not be implemented solely on the basis of automated recommendations. Directors must independently evaluate AI-generated advice before making final decisions.

Third, companies should establish internal AI governance policies covering ethical use, data management, algorithmic fairness, cybersecurity, risk assessment, and accountability. Such policies should become an integral component of corporate governance practices.

Fourth, independent AI audits should be conducted periodically[17] to evaluate accuracy, fairness, security, and legal compliance. Regular audits would reduce algorithmic bias, strengthen stakeholder confidence, and minimise corporate risks.

Finally, continuous cooperation between government, regulators, technology companies, academic institutions, and industry experts is essential for developing effective AI governance. Since Artificial Intelligence evolves rapidly, regulatory frameworks must remain flexible and capable of responding to future technological developments.

Conclusion

Artificial Intelligence has fundamentally transformed corporate governance by improving efficiency, strengthening compliance, enhancing risk management, and supporting informed decision-making. At the same time, its growing influence has generated significant legal and ethical concerns relating to accountability, transparency, privacy, cybersecurity, algorithmic bias, and human oversight.

India's present legal framework provides an important foundation through the Companies Act, 2013[18], the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and the Digital Personal Data Protection Act, 2023. However, these laws were not specifically designed to regulate AI-assisted corporate governance and therefore leave several important legal questions unanswered.

International developments demonstrate that responsible regulation can encourage innovation while protecting stakeholder interests. India should therefore adopt a balanced and comprehensive regulatory framework capable of promoting ethical AI, legal accountability, corporate transparency, and responsible technological development.

Artificial Intelligence should not replace human judgment but should function as a powerful tool supporting responsible corporate governance[19]. The future success of AI in India's corporate sector will depend upon developing a legal framework that preserves innovation while reinforcing the fundamental principles of accountability, transparency, fairness, and good governance.

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RESEARCH ARTICLE

The WTO Appellate Body Impasse: Dispute Resolution in Crisis and the Path to Reform

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Abstract

The Appellate Body of the World Trade Organization (WTO), once dubbed the "crown jewel" of the multilateral trading system, is now at a standstill since it went without two members needed for appeals to be heard following the expiration of their terms on Dec. 11, 2019. The paralysis was less a coincidence than the result of a concerted American campaign against the tribunal that relied on objections to the practice of the 'overstaying members' under Rule 15, the perceived 'overreach' in Article 17(6) of the Dispute Settlement Understanding, and persistent failure to abide by the ninety day decision rule. This paper will review the historical evolution of dispute settlement under the GATT, from the diplomatic veto of that era to the innovation of the negative consensus of the DSU, and then discuss the impact of the Appellate Body Blockage has had on the system: appeals "into the void," the loss of binding rulings and the structural imbalance between the powerful economies and smaller trading partners. A special focus is placed on the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), a non-universal, voluntary, and now thirty-four-members strong EU-Colombia frozen chicken cuts ruling, which illustrates an example of a well-functioning appellate mechanism. The paper also evaluates the uneven burden developing countries have suffered as they have traditionally depended on binding adjudication as a counterweight to geopolitical leverage. Based on the Ministerial Conferences promises made at MC12/MC13 and scholarly recommendations for reform, the paper suggests that no single solution – be it DSU amendment, MPIA consolidation or building capacity among developing countries – will do the job of rebuilding systemic confidence. Rather, there is a need for a three-pronged strategy consisting of specific procedural changes, multilateralization of appellate mechanisms and renewed political will in the main economies. The paper concludes that the Appellate Body crisis is in fact a stress test of multilateralism itself, to see if powerful states will adhere to rules-based binding adjudication of sovereign trade behaviour, instead of simple economic leverage. THE WTO APPELLATE BODY IMPASSE: DISPUTE RESOLUTION IN CRISIS AND THE PATH TO REFORM

The World Trade Organization's dispute settlement mechanism has long been celebrated as one of the most sophisticated and effective instruments of international economic governance. Emerging from the ruins of the General Agreement on Tariffs and Trade (GATT) era, the Dispute Settlement Understanding (DSU),[2] which entered into force on January 1, 1995, enshrined a compulsory, rules-based, two-tier adjudicatory process that transformed the resolution of trade conflicts from a purely diplomatic exercise into a quasi-judicial one. Central to this architecture is the Appellate Body (AB) — a standing tribunal of seven members empowered under Articles 17 and 19 of the DSU to hear appeals from first-instance panel reports on questions of law. For over two decades, the AB served as what many scholars and trade diplomats reverentially called the "crown jewel" of the multilateral trading system — a body that imposed discipline upon sovereign states through the rule of law rather than the rule of power.

Yet since December 11, 2019, the Appellate Body has been unable to hear a single appeal. On that date, the terms of two of its three remaining members expired, leaving it without the minimum quorum of three required to constitute a division and hear cases. This paralysis was not a sudden institutional failure but the culmination of a sustained campaign by the United States — first under the Obama administration and later, far more aggressively, under the Trump and subsequent administrations — to block new appointments to the AB, citing grievances about judicial overreach, the practice of "overstaying" members, and broader concerns over American trade sovereignty.[3] The consequences have been profound. Losing parties routinely appeal panel decisions "into the void,"[4] effectively stymieing enforcement and leaving disputes in a state of indeterminate legal limbo.[5] The resulting fragmentation of the multilateral trade order, the proliferation of workaround mechanisms, and the rising tide of unilateralism all raise a fundamental question: can the WTO's dispute settlement system survive, and if so, in what form?

This article undertakes a comprehensive examination of the Appellate Body crisis — its historical origins, structural and political causes, institutional consequences, the emergency mechanisms devised in response, the structural reforms proposed, and the implications for developing nations — before offering a set of actionable recommendations for a renewed and inclusive dispute settlement architecture. The analysis proceeds in five chapters and concludes with a forward-looking prescription for the rehabilitation of the world's most consequential trade tribunal[6].

1.2 RESEARCH QUESTIONS

Has the WTO Appellate Body crisis weakened dispute settlement?

Can the MPIA replace the Appellate Body effectively?

How has the impasse affected developing countries?

1.3 HYPOTHESIS

The WTO Appellate Body crisis reveals a deeper clash between sovereign prerogatives and the rules-based multilateral order: powerful states resisting binding appellate oversight have hollowed out a core enforcement mechanism. The MPIA demonstrates creative interim cooperation under Article 25 but remains voluntary, non-universal, and limited in precedential effect, so it cannot fully replace a permanent AB. A durable remedy requires targeted DSU amendments addressing legitimate procedural concerns, political commitment from major economies to renounce unilateral blockage tactics, and institutional consolidation of plurilateral appellate arrangements with safeguards for developing members' access. Only this combined approach can restore credible, inclusive, and enforceable WTO adjudication

CHAPTER I: HISTORICAL ARCHITECTURE OF THE WTO DISPUTE SETTLEMENT SYSTEM

To understand the depth of the present crisis, one must first appreciate the institutional ambition embedded in the WTO's dispute settlement framework at its founding. The Uruguay Round negotiations that culminated in the Marrakesh Agreement of 1994 produced the DSU as a comprehensive overhaul of the ad hoc and largely ineffective GATT dispute resolution mechanism. Under GATT[7], any contracting party could block the adoption of a panel report by withholding consensus — a diplomatic veto that rendered adverse rulings largely advisory in character. The DSU corrected this fundamental deficiency by adopting the principle of "negative consensus," under which a panel or AB report stands adopted unless every WTO member, including the party in whose favor the ruling was made, agrees to reject it. This structural innovation gave the dispute settlement system genuine teeth: for the first time in the history of international economic law, trade rulings would be binding, appeals would be heard by a standing appellate tribunal, and compliance would be backed by the threat of authorized countermeasures.

The Appellate Body itself was constituted as a standing body of seven members serving four-year terms, with the possibility of one renewal. Its founding jurisprudence established landmark precedents — from the Shrimp-Turtle cases that interpreted Article XX environmental exceptions,[8] to EC — Bananas that tested the depth of the system's enforceability — that gave it the character of a genuine international appellate court rather than a mere reviewing tribunal. The DSU also enshrined strict timelines: panels were to report within six months, and the AB was to render its decision within sixty to ninety days of an appeal being filed.[9] These provisions were designed to ensure that the dispute settlement process would be faster, more predictable, and more rule-consistent than the GATT era. The entire system was predicated on a shared commitment among WTO members that the compulsory jurisdiction of the dispute settlement mechanism was the price of membership in the most comprehensive trade regime in history. That shared commitment began to unravel not suddenly, but gradually, through a widening fault line between the United States and the rest of the membership regarding the proper scope of appellate review[10].

CHAPTER II: ANATOMY OF THE APPELLATE BODY BLOCKAGE

The origins of the present impasse lie in American dissatisfaction with the AB's interpretation of its own mandate. The United States, regardless of the party in power, has articulated a consistent set of objections to the manner in which the Appellate Body has conducted its business. Three grievances stand out. [11]First, the U.S. objected to the practice of "Rule 15" — a procedure whereby AB members whose terms have expired continue to participate in appeals that were initiated before their terms ended, a practice the U.S. characterized as unauthorized judicial overhang inconsistent with the DSU's fixed term structure.[12] Second, the U.S. complained repeatedly that the AB routinely exceeded its mandate under Article 17(6) of the DSU, which limits its jurisdiction to "issues of law covered in the panel report and legal

interpretations developed by the panel." In the American view, the AB had drifted into pronouncing on matters not strictly necessary for the resolution of the dispute, effectively creating binding precedents that accumulated into a body of quasi-legislative jurisprudence that constrained future U.S. trade policy space. Third, the United States expressed deep frustration with what it perceived as the AB's failure to comply with the ninety-day rule for rendering decisions — a procedural discipline that, in the U.S. view, had been routinely sacrificed in favor of comprehensive legal opinions that functioned more as policy documents than adjudicatory judgments[13]***.***

Beginning in 2017, the Trump administration escalated these objections into a systematic blockade of all appointments to fill AB vacancies. As sitting members completed their terms, the body shrank from seven members to three by 2019 — the bare minimum quorum — and then, with the expiry of two remaining members' terms on December 10, 2019, to one, rendering the tribunal constitutionally dysfunctional. Efforts by successive WTO Director-Generals to broker compromise appointment packages, including the "Walker Process" in 2019, failed to obtain American consent[14]***. The Biden administration, despite adopting a more multilateral posture in trade relations, did not reverse the appointment block, leaving the system effectively frozen.***[15] ***Parties that lost before first-instance panels found themselves facing a Hobson's choice: accept an adverse ruling against which the DSU guarantees a right of appeal, or appeal a report that no tribunal could hear, leaving the dispute unresolved indefinitely. The systematic use of the appeal "into the void" became a perverse but rational litigation strategy, exploited particularly in disputes involving large economies with deep political incentives to delay adverse trade law findings. The result was a dramatic reduction in the number of new disputes filed — reflecting not a decline in trade friction but a rational assessment by members that investing in expensive litigation with no enforceable outcome was poor legal strategy***[16]***.***

CHAPTER III: THE MULTI-PARTY INTERIM APPEAL ARBITRATION ARRANGEMENT — A STOP-GAP UNDER SCRUTINY.

In April 2020, the European Union and a coalition of WTO members — initially nineteen in number — launched the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), invoking Article 25 of the DSU[17]***, which permits WTO members to agree by mutual consent to use arbitration as an alternative means of settling disputes. The MPIA was designed explicitly as a bridge mechanism to preserve the two-stage character of WTO dispute settlement in the absence of a functioning Appellate Body. Under the arrangement, parties that are both MPIA members and that are engaged in a dispute before a WTO panel agree, in advance, that any appeal of the panel report will be heard by a three-member tribunal drawn from a standing pool of ten arbitrators appointed by the MPIA parties themselves. As of May 2026, the MPIA has grown to thirty-four members (counting the EU and its twenty-seven member states as one unit), with Malaysia, Paraguay, Viet Nam, the United Kingdom, Moldova, Liechtenstein, and Barbados joining between 2024 and 2026.***[18]

The MPIA's institutional design reflects both creativity and caution.[19] ***The arrangement preserves the essential features of appellate review — independence, deliberative procedure, legal reasoning grounded in WTO law — while allowing parties to customize certain procedural elements of each appeal arbitration agreement. The first substantive appeal decided under the MPIA involved the EU-Colombia trade dispute concerning frozen boneless chicken cuts, and the arbitral award was rendered in a manner broadly consistent with prior***

AB jurisprudence. This precedent was important: it demonstrated that Article 25 arbitration could function as a credible substitute for AB review, at least among consenting parties, without rupturing the coherence of WTO law. However, the MPIA's limitations are as significant as its achievements. Its voluntary nature means it binds only those members who have explicitly joined it; the United States, India, and several other major trading powers remain outside the arrangement, meaning that disputes involving these economies — which account for a disproportionate share of global trade volume and WTO litigation — cannot be resolved through the MPIA. Moreover, MPIA arbitral awards technically lack the formal legal status of AB reports, raising questions about their precedential weight in future panel or AB proceedings. The MPIA is ultimately a sophisticated workaround rather than a structural solution, and its architects have consistently acknowledged this[20].

CHAPTER IV: CONSEQUENCES FOR GLOBAL TRADE ORDER AND DEVELOPING NATIONS

The paralysis of the Appellate Body has generated a cascade of consequences that extend far beyond procedural inconvenience. At the systemic level, the absence of a functioning appellate review mechanism has weakened the enforceability architecture of international trade law. The appeal-into-the-void strategy, when deployed by powerful economies, effectively neutralizes adverse panel decisions without any penalty under WTO law — since the DSU's authorization of countermeasures is conditioned upon the adoption of a final ruling, which never occurs when a "live" appeal is pending before a non-functioning tribunal. This creates a structural asymmetry of legal power: large economies with the resources to litigate and the political leverage to exploit procedural ambiguities can use the impasse strategically, while smaller and medium economies — for whom the WTO's legally binding dispute resolution was precisely the institutional equalizer that made membership worthwhile — bear the cost of unenforced rights.[21]

The implications for developing and least-developed country members are particularly severe. Developing nations have historically been among the most vigorous users of the WTO dispute settlement system, bringing cases against EU agricultural subsidies, U.S. cotton support programs, and discriminatory trade remedies precisely because the binding, rules-based character of the DSU gave them a legal forum in which legal merit, rather than geopolitical weight, was the deciding factor[22]. With the AB paralyzed and the MPIA available only to a subset of members, developing countries face diminished recourse. Bilateral "solutions" to trade disputes — one of the default alternatives that WTO members have increasingly resorted to in the post-2019 environment — are inherently tilted toward the stronger party. Smaller economies that would once have relied on multilateral adjudication to secure compliance with trade obligations now find themselves confronting the very power asymmetries that the DSU was designed to overcome. The shift toward bilateralism also risks fragmenting the multilateral trading system into a network of overlapping and potentially inconsistent bilateral arrangements — a development inimical to the systemic coherence and nondiscrimination principles upon which the WTO was built. Furthermore,[23] the growing resort to unilateral trade measures — Section 232 tariffs on steel and aluminum, Section 301 investigations, and industrial policy measures of dubious WTO legality — in a context where the enforcement mechanism is disabled represents a structural regression toward the mercantilist trade conflicts of the interwar period that the GATT and WTO were expressly created to prevent[24].

CHAPTER V: PROPOSALS FOR REFORM AND THE FUTURE OF WTO DISPUTE SETTLEMENT

The WTO membership has not been passive in the face of this crisis. A succession of formal and informal reform proposals has been advanced — at Ministerial Conferences, in the Dispute Settlement Body, and through academic and policy literature — each seeking to address the impasse in different ways and to different degrees of comprehensiveness. At the Twelfth Ministerial Conference (MC12) in Geneva in June 2022[25], WTO members committed to work toward a "fully and well-functioning dispute settlement system accessible to all members" by the end of 2024 — an ambitious self-imposed deadline that reflects the political urgency of the issue.[26] At MC13, held in Abu Dhabi in February 2024[27], ministers acknowledged the progress made in reform negotiations and reaffirmed the commitment to restoring a functional appellate mechanism, though no breakthrough agreement was reached[28].

The substantive reform proposals under consideration span a spectrum from minimal adjustments to comprehensive institutional redesign. One school of thought advocates targeted amendments to the DSU — clarifying the scope of appellate review under Article 17(6)[29], codifying strict compliance with the ninety-day rule, formalizing the termination of service upon expiry of a member's term, and establishing clear procedures for filling vacancies — as a means of addressing the U.S. objections while preserving the AB's essential institutional structure. A second, more ambitious proposal calls for the creation of a reformed permanent appellate mechanism with a broader mandate — possibly incorporating a mediation track for non-legal aspects of disputes, an expedited procedure for urgent matters, and a developmental track providing enhanced support to developing country members. The ICC International Centre for ADR has advanced the case for integrating mediation more systematically into WTO dispute settlement, noting that WTO rules already provide for mediation but that the absence of clear procedural rules has deterred its use.[30] A third line of thinking, informed by the MPIA experience, treats the Article 25 arbitration framework as the foundation for a permanent plurilateral appellate arbitration arrangement that can function independently of consensus among all 166 WTO members — effectively institutionalizing the MPIA as a durable second-tier review mechanism for willing members while leaving the door open for U.S. participation on reformed terms. Finally, some scholars have proposed creating a "two-speed" WTO[31], in which a coalition of rule-compliant members with a functioning dispute settlement system reinforces the multilateral trading system while isolated holdouts — primarily the U.S. — face reputational and economic pressure to rejoin[32].

CHAPTER VI:RECOMMENDATIONS

The rehabilitation of the WTO dispute settlement system is not merely a technical legal project but a profound act of political will — one that requires the world's largest trading powers, and above all the United States, to recommit to the foundational bargain of the multilateral trading system: that sovereign states can accept binding adjudication of trade disputes precisely because the rules are made and administered collectively, with the consent of all members. Drawing upon the foregoing analysis, the following recommendations are advanced.

The most urgent priority is the negotiation of a framework of DSU amendments specifically designed to address the legitimate concerns of the United States while preserving the integrity of appellate review as a binding, independent, and legally coherent process. Such amendments should codify a strict reading of the Appellate Body's jurisdiction under Article 17(6), explicitly prohibit AB members from serving beyond the expiry of their terms in any circumstance, and impose enforceable timelines for both the appointment of new members and the rendering of appeals decisions. These modifications, if carefully drafted, would remove the principal stated objections of the United States without compromising the AB's capacity to develop principled, consistent WTO jurisprudence. The negotiating forum for these reforms should be a dedicated working group within the DSB with a time-bounded mandate, reporting directly to the General Council, and backed by a political commitment from the membership's most influential trading powers to reach agreement within a defined period of two years.

Simultaneously, the MPIA should be deliberately expanded and institutionally consolidated as a parallel appellate mechanism under Article 25, with the goal of gradually converting it from an interim stopgap into a permanent plurilateral appellate arbitration arrangement. The legal architecture for such a consolidation already exists: Article 25 of the DSU is a permissive provision that allows WTO members to design arbitration procedures of their choosing, and the MPIA's existing pool of arbitrators, procedural rules, and institutional memory provide a foundation upon which a more permanent structure can be built. The arrangement's membership should be actively expanded through diplomatic engagement — particularly toward India, which as one of the world's largest trading economies and a major user of the WTO dispute settlement system has much to gain from a functioning appellate review mechanism and has thus far remained outside the MPIA for reasons that merit serious reconsideration in light of its growing trade interests. The creation of a permanent secretariat function for the MPIA — whether housed within the WTO Secretariat or as a standalone support unit — would enhance institutional continuity and reduce the procedural overhead that currently burdens each individual appeal arbitration agreement.

The dimension of developing country access deserves particular policy attention and institutional investment. The Advisory Centre on WTO Law (ACWL), which provides subsidized legal support to developing and least-developed country members in WTO dispute settlement, should be substantially strengthened — in terms of both funding and mandate — to enable developing countries to participate effectively not only in first-instance panel proceedings but in MPIA arbitrations and any future reformed appellate mechanism. Procedural innovations that reduce the cost and complexity of WTO litigation — including standing mediation facilities with professionally trained neutrals, expedited procedures for disputes involving measures with particularly time-sensitive trade impacts, and enhanced amicus participation rules — should be incorporated into a reformed DSU to democratize access to the system. The experience of the MPIA as a "laboratory of experimentation," as Pauwelyn famously described it, should be harnessed to pilot and evaluate these innovations on a consensual, opt-in basis before they are formalized into binding DSU amendments.[12][2]

At the deepest structural level, the WTO membership must confront the foundational tension that the Appellate Body crisis has laid bare: the tension between the sovereignty concerns of powerful states and the systemic need for compulsory, binding dispute resolution that is the very essence of the multilateral trading system. No reform of the dispute settlement system will be durable if it does not resolve this tension in a principled and politically sustainable

way. The reform process should therefore engage directly with the United States — and any other member with comparable objections — in a structured dialogue about the proper scope of international adjudication in the trade context, the legitimate boundaries of AB lawmaking, and the design of a renewed appellate mechanism that commands the support of all major trading powers. The 2024 deadline set at MC12 may have passed without a comprehensive solution, but the commitment it embodied must be renewed with greater political urgency and institutional ambition. The WTO's dispute settlement system, for all its current dysfunction, remains the indispensable institutional infrastructure for a rules-based global trading order. Without it, the architecture of international economic law is not merely damaged — it is existentially imperiled, and the consequences for global economic stability, for developing country welfare, and for the principle of the rule of law in international relations would be profound and lasting.

CHAPTER VII:CONCLUSION

The crisis engulfing the WTO Appellate Body is, at its core, a crisis of multilateralism itself — a stress test of whether sovereign states, particularly the most powerful among them, remain willing to subject their trade conduct to binding international adjudication governed by collectively agreed rules rather than by raw economic leverage. The Appellate Body was never a perfect institution. Its critics raised legitimate concerns about judicial overreach, procedural delays, and the creeping transformation of a reviewing tribunal into a quasi-legislative authority. However, the appropriate response to institutional imperfection is principled reform, not the strategic dismantlement of an adjudicatory architecture that took decades of painstaking multilateral negotiation to construct. The United States' systematic blockade of appointments, whatever its domestic political logic, has inflicted damage upon the rules-based trading order that extends far beyond American interests and far beyond the bilateral disputes that the U.S. sought to insulate from adverse appellate rulings.

The emergence of the Multi-Party Interim Appeal Arbitration Arrangement reflects the resilience and ingenuity of the WTO membership in the face of institutional paralysis. The MPIA demonstrates conclusively that the legal infrastructure of Article 25 of the DSU can sustain a credible appellate review mechanism — one capable of producing legally reasoned, procedurally fair, and substantively coherent rulings even in the absence of a functioning Appellate Body. However, the MPIA is by design and by admission a temporary construction, a bridge rather than a destination. Its voluntary character, its exclusion of the world's largest trading powers, and its uncertain precedential standing in the broader WTO legal order mean that it cannot, on its own, restore the systemic confidence and legal certainty that the dispute settlement mechanism once provided.The path forward demands simultaneous action on multiple fronts: targeted and politically realistic amendments to the DSU that address U.S. objections in good faith; the consolidation and expansion of the MPIA into a permanent plurilateral appellate mechanism with an expanded membership; the strengthening of developing country access through enhanced ACWL funding and procedural innovations; and, most fundamentally, a renewed diplomatic compact among the world's major trading powers to recommit to the binding, rules-based dispute settlement system as the non-negotiable foundation of the multilateral trading order. The failure to act is not a neutral choice. Every month in which the Appellate Body remains paralyzed is a month in which the strategic advantages of non-compliance outweigh the legal costs of violating WTO obligations — a perverse incentive structure that corrodes the normative fabric of international trade law

from within. The WTO was built on the revolutionary premise that international economic relations could be governed by law rather than power. Restoring the Appellate Body to functionality is not merely a procedural reform — it is an act of fidelity to that founding premise, and to the vision of a world in which even the most powerful states are answerable to the rules they helped create.

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RESEARCH ARTICLE

Treaties and Third State Obligations under International Law

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Abstract

The notion of "sovereign equality among all states" is central to modern international law. Some states have the legal authority to impose rules of behaviour on non-contracting parties, which contradicts the values of equality as well as autonomy in a society based on coordination among members. Accordingly, in the words of L. McNair, "both legal principle and common sense are in favour of the rule pacta tertiis nec nocent nec prosunt, because as regards States which are not parties (commonly referred to as Third States & apos) a treaty is res inter alios acta". The implementation of this ancient Roman law principle is now widely recognized and respected worldwide. This broad rule serves as the primary framework for analysing the relationship among international treaties and non-party states. The differences in attitudes towards international law-creation and its obligation to those of the international community highlight the socio-political divide between the Western world, new states, and socialist countries. However, the traditional rule "pacta tertfis nec nocent necprosunt" is inherently misleading. Law-making is a process of liberating legal norms from the constraints of strict consensus. This paper examines how third countries execute international law. There is legal, practical, and scholarly support for third-state remedies.

Keywords: International Law; Non-Parties; State Sovereignty; Third State; Treaties; Party Obligations

Art.2 (1) (h) of “the Vienna Convention” defines a third state as one that is not a party to the treaty, which is a widely accepted definition. While, third state remedies appear to promote international law, they can sometimes have harmful consequences. The international community has the difficulty of creating an efficient third-party enforcement system with minimal negative consequences. Treaties, whether general, regional, or specific, impose standards of conduct on contracting parties, requiring them to avoid activities that violate their responsibilities. The civil law maxim "pacta tertiss nec nocent nec prosunt" is derived from Roman law. Agreements only apply to the parties involved and cannot bind or grant rights to third parties. The legal effects of an agreement should only apply to the contracting parties, as per the cited principle. This rule's basis in Civil Law is based on the concept of contract law. International law is further supported by the laws of sovereignty and independence of states. International treaties typically only apply to contracting states and do not provide rights or duties to non-party states. The notion of consent as the cornerstone of treaty obligations is widely recognized in state practice, international tribunal decisions, and jurists' writings.[2]

In the case of “*German Interests in Polish Upper Silesia*”,[3] the Permanent Court of International Justice stated that “it is impossible to assume the existence of such a right in the case of the Armistice Convention. A treaty merely creates law between its parties”.[4] The Court ruled that Poland could not benefit from the Armistice Agreement because it was not a party to it. Similarly, in the case of *“Factory of Chorzow”*, The Permanent Court ruled that Poland could not use the articles of the Armistice Convention to which they were not a party.[5]

“Pacta tertiis nee noeent nee prosunt”, a principle in modern international law, is linked to the idea of non-interference in third states' internal affairs.

The time before World War II

Before World War II, international law usually only allowed countries directly affected by a legal violation to seek remedies. However, some legal scholars, like Hugo Grotius and Elihu Root, believed that certain actions—like illegal use of force—could be challenged by any country, not just those directly harmed.

“The Wimbledon case, which permitted third-party members of multilateral treaties to intervene, is frequently cited. Germany refused to allow a British vessel under charter to navigate the Kiel Canal for a French business. The Applicants (Great Britain, France, Italy, and Japan) sued Germany under the Treaty of Versailles’ provision. The applicants contended that the Treaty safeguarded their right to navigation. The Court ruled in favor of the Applicants, awarding France compensation. The Court upheld their participation in the dispute due to their status as Treaty parties. Poland intervened in accordance with the PCIJ Statute, as a party to the Treaty, without establishing a legal stake. The case suggests some support for third-party rights and duties”[6].

The time after World War II

Following World War II, there was increased support for third-state rights and duties.
The United Nations Charter outlines a position within the United Nations. Additionally, the Vienna Convention on the Law of Treaties limits the participation of third nations in treaty law.

THE UNITED NATIONS SYSTEM

Treaties allow governments to authorize third parties to implement international law. This can be accomplished by governments acting independently or by collective decisions. The United Nations Charter calls for collective action by third nations to address international law transgressions.[7] The Charter allows governments to report circumstances that threaten international peace and security to the Security Council. The Charter allows the Security Council to enforce ICJ judgments if a state fails to fulfil its duties, as requested by the victorious state. The Security Council's decisions may impose duties on other Charter member nations.

HUMAN RIGHTS

Jus cogens law has mostly focused on international human rights law, which has undergone significant changes after WWII. Human rights legislation does not always follow jus cogens or erga omnes principles. Without third-party remedies, many aspects of international human rights legislation would be ineffective. State accountability is a classic international law that covers maltreatment of one state's nationals by another. Human rights legislation has developed to address A state mistreats its own citizens. Without third-party remedies for infringement, state actors cannot enforce them. Without a remedy, such a statute may be null and void. Fortunately, third nations have the power to respond to human rights violations under international law.

EXCEPTIONS TO THE MAXIM

The question of whether the norm "pacta tertus nec nocent nee prosunt" allows for exceptions in international law has long been a source of debate. The members agreed that a treaty cannot create obligations for non-parties on its own. However, they disagreed on whether a treaty can confer rights on a non-party. In practice, exceptions can be split into two categories:

There are two types of treaties:

those that impose responsibilities on third states and

those that provide them rights**.**

TREATIES OBLIGATED FOR THIRD-PARTY STATES (PACTA IN DETRIMENTUM TERTII)

The Vienna Convention established the idea that a treaty cannot create obligations or rights for a third state without its assent. “An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.”[8]

This rule highlights two conditions that must be met for a non-party state to become bound by the treaty:

“the States parties to the Treaty must have intended the provision in question to be the means of establishing an obligation for the State not a party to the Treaty.

the third State non-party to the treaty must have expressly agreed to be bound by the obligation”.

A second collateral agreement exists between the treaty's parties and a third state. The collateral agreement appears to serve as the legal basis for the latter's commitment, rather than the treaty itself.

Certain instances may arise where a treaty imposes liabilities or creates an unfavourable position for a third state. Parties to a treaty may agree to do their best efforts to ensure that third-party states follow suit. This is the exact principle expressed as “The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the main tenance of international peace and security”.[9]

In this case, the third state has no direct obligation to the issue as it is not a party to the agreement. The pact does not absolve the persons involved. Efforts should be made to ensure that the third state adheres to the provisions of the treaty, as long as this is not illegal. It's important to note that treaty provisions do not impose any responsibilities on third-party states.

The Vienna Convention addresses the revocation or modification of obligations incurred by a third state. As follows:

“The obligations may be revoked or modified only with the consent of the parties to the treaty and of the third State unless it is established that they had otherwise agreed.”[10] This rule applies when the third State tries to withdraw or alter the commitment. When parties attempt to withdraw an obligation, obtaining consent from a third State becomes more complicated. In cases when participants were simply reaffirming their right to demand performance. It could be argued that the third State's assent is unnecessary for fulfilling the commitment. It appears doubtful that any difficulties will occur in this case. The International Law Commission believes that simple cases in international relations are uncommon. In most cases, a third State's obligation involves a complex relationship, requiring mutual consent for any changes.

TREATIES PROVIDING FOR RIGHTS FOR THIRD STATES (PACTA IN FAROREM TERTII)

The Commission generally agreed that there are no exceptions to the concept of the third State's permission in the case of obligations led to a debate on whether a treaty can impose rights on non-parties. A treaty can have this impact if the parties desire it, but non-parties have no obligation to sign or exercise the right (according to one set of members). Another section of members believed that the non-party only has rights if they accept them. The Commission's disagreement stemmed from a debate regarding the impact of favorable provisions. The concept of third states remains a source of debate among international law experts. While most agree that treaties can provide benefits to third countries, there is still debate about whether the third country must accept the benefit to be entitled to it.

ISSUES ARISING FROM THE VIENNA CONVENTION AND THE PRINCIPLES

The Vienna Convention does not specifically address treaties that establish actual regimes in international law. Considering the importance of custom in extending the application of treaty principles beyond the signatory States, the Convention states that, “nothing in its articles precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such”.[11] The classical principles of “pacta in favorem tertii and pacta in detrimentum tertii” are no longer applicable in today's international relations and mutual relationships between states. Modern international treaties are becoming increasingly complex in terms of their legal structure.

"Although the rules elaborated in the Vienna Convention have, undoubtedly, their importance, it seems that the most important role is now and will be in the future connected with the problem of conventional rules becoming binding as customary rules of international law or as the so-called ius cogens, i.e. peremptory norms of general international law".[12]

ANALYSIS OF THE TREATIES ON THIRD STATES OBLIGATION

Treaties can benefit or harm other states in two ways: It might have an adverse impact on the interests or on the legal posture of states that are not party to them.

"Lack of Legal Instruments to Oppose Treaties: While third-party states may be politically or economically influenced by a treaty, they cannot seek legal remedy unless it violates peremptory norms. For example, an ally may endanger the security of other third states, or a trading relationship may be detrimental to third-party trade interests; yet, these alliances or trade deals remain legitimate as long as they do not violate peremptory norms. Third states, as described in the agreement, can only protest diplomatically, with no legal tools to prevent the adoption of such treaties".[13]

"Retroactive Effects on Interests: While some treaties do not impose legal responsibilities on third-party governments, others may influence their interests. For example, the defence agreements that exist between NATO members influence non-member governments' security perceptions, and third countries typically respond politically rather than legally. This is demonstrated by the Soviet Union's stance towards NATO and the WEU (Western European Union) treaties: while the Soviet Union expressed alarm, it was unable to modify the legal character of these agreements".[14]

"Difficulty in Participation or Opposition: Even if the treaty benefits the third state or advances this state's interests, participation is not guaranteed. While states may be interested in joining multilateral treaties, they do not have the right to participate because they are not considered treaty parties. Parties who are not treaty members generally lack complete authority to enjoy treaty benefits or change treaty terms".[15]

"Customary international law against treaty obligations: While treaties do not bind third countries, norms drawn from them can become customary international law if generally accepted. Third states must, however, acknowledge these regulations as customs in order for them to be obligatory. There is an ongoing dispute on whether certain multilateral treaties, particularly those linked to peace and security, impose responsibilities on non-parties due to their widespread relevance".[16]

CASE STUDIES

South West Africa Cases (Ethiopia v. South Africa)

In the aftermath of World War I the League of Nations started to establish mandates for the German and Ottoman territories. South West Africa (now Namibia) was put under mandate and South Africa was placed as the mandatory responsible for the government and wellbeing of the people of the said land. As time went by it was evident that South Africa was not meeting her obligations as required under the mandate. However, South Africa was criticized for taking apartheid policies to affect the well-being of the indigenous people in South West Africa thus attracting the concern of the international community. In 1960, Ethiopia and Liberia two Afro countries that were members of last League of Nations laid complaints against South Africa to the ICJ alleging that the latter had violated its compulsory duties under the terms of mandate. Neither of the two countries concerned claimed to have been directly injured and but relied on collective rights of members of the League of Nations to enforce the provisions of the mandate. Thus, "it is conceivable that injury to the legal rights of otherwise disinterested third states could be found under specific rules of customary international law. To this extent, the Judgment is limited, yet it permits the further evolution of the rule of third state remedies".[17]

Continental Shelf (Libya v. Malta)

"The Statute of the ICJ provides two types of intervention:

Article 63 allows intervention when the construction of a convention to which the intervening state is a party is in question.

Article 62 allows intervention when a state has a legal interest that may be affected by the decision".

Malta tried to mediate in a conflict between Tunisia and Libya on the grounds that their boundary dispute might impact on the country's shelf rights. The International Court of Justice did not allow Malta to involved the case, and it considered the case only in terms of the dispute between the parties Tunisia and Libya. Likewise, Italy attempted to involve itself in the delineation of boundaries between Malta and Libya noting that the outcome may be in a way that is prejudice to its own interest. That is why the ICJ rejected the request and brought the case to reflect a conflict between the parties.
This was in a case between Nicaragua and the United States but it states that it has the consent of El Salvador to intervene since the actions of Nicaragua extended to its territory and endangered its political existence. The requested at the Jurisdiction Phase in which the ICJ denied the right of El Salvador to intervene for the same reasons, arguing that the Court's right to intervene was limited, and its interest in the case's issues were not directly connected to the jurisdictional issues. The Court determined that the state target of an armed attack must request intervention from a third state for collective self-defence. The Court carefully characterised the cases to only include disputes between states parties. of its decisions, however, the Court did aim to avoid commenting on the limits of locations known to be the states claimed and denied intervention. The document acknowledged the importance of the third state issue by explicitly mentioning intervention decisions.[18]

Israel-Palestine Conflict and International Humanitarian Law:

The international Conventions which are subject to the regulation of the conduct of warfare and occupation are binding the states. But what of those who are not state parties in the treaty, yet are in conflict, they may not be bound by treaty but they are obliged to respect the principles of customary IHL. The example of present day's Israeli—Palestine conflict brings out how other actors or groups in a conflict such as Hamas can never be direct signees to certain treaty provisions yet they are still obliged to respect general principles of international law.

The Iran Nuclear Deal (JCPOA):

JCPOA was a deal signed between Iran and seven western states known as P5+1 comprising of China, France, Russia, the United Kingdom, the United States of America and Germany. And when U.S. decided to withdraw from the agreement unilaterally in 2018, it created issues with how others, both remaining parties and third states should proceed in their actions. Some of the effects of the JCPOA and its collapse have affected other states that are not signatories to the deal, especially those in the Middle East. These states were not party to it but they have fallen to it geopolitical implications which show the exceptions of "pacta tertiis."

SUGGESTIONS

Future discourse should focus on clarifying the balance between state sovereignty and global interests, especially in areas like human rights, environmental protection, and collective security. There is a need to refine treaty frameworks under the Vienna Convention to explicitly address the scope of third-state obligations. Greater reliance on customary international law and recognition of peremptory norms could strengthen enforcement, while mechanisms within the UN and regional organizations should be enhanced to ensure fairness when treaties impact non-parties. This would help create a more coherent and equitable system of international treaty law.

CONCLUSION

The analysis of the treaties and third state obligation under international law exposes the issues of applicable legal standards to non-party states. This is in line with the principle of "pacta tertiis nec nocent nec prosunt" which establish the independence of third states but there are situations where a third state maybe directly affected by a treaty and be bound by it or gain from it without their consent. The historical development of international law especially that after the second world war brought about an understanding of the role and position of the third party particularly in human rights together with collective security. Nevertheless, problems in legally defining and adjusting the concept of 'fairness' in treaty relations and in regulating non Party consequences of treaties are still observed in different case-studies and in the framework of the modern international legal system. This analysis vindicates the need to engage in further refinement of such international legal instruments that aim at striking the right balance between sovereignty of states and international interest as concerning treaty execution and non-execution of their treaty obligations, influence of third States in international legal processes.

Footnotes

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ARTICLE

Beyond Tomorrow Sales: Filling the Statutory Void of Third-Party Funding in India

Chaitanya Raj Garg

Abstract

This article examines the legal and regulatory position of third-party funding in Indian arbitration after Tomorrow Sales Agency Pvt. Ltd. v. SBS Holdings, Inc. It traces judicial acceptance of litigation funding, identifies unresolved regulatory concerns, compares the approaches adopted in Singapore and Hong Kong, and proposes targeted amendments to the Arbitration and Conciliation Act, 1996.

Keywords: Third-Party Funding; Arbitration; Access to Justice; Disclosure; Adverse Costs; India

Arbitration was historically conceptualized as a swift, autonomous and cost-effective alternative to traditional civil litigation. However, the contemporary reality of international and domestic commercial arbitration tells a drastically different story. Spiralling tribunal fees, steep administrative expenditures and escalations in expert witness costs have effectively transformed modern arbitration into an elite corporate mechanism. For capital-constrained claimants, this fiscal entry barrier frequently results in a denial of justice, as meritorious claims are abandoned due to sheer economic exhaustion.

It is within this systemic friction that Third-Party Funding ["**TPF**"] emerges as a critical paradigm shift. TPF describes a commercial arrangement wherein an entity independent of the dispute provides the financial resources necessary to cover a party's legal costs in exchange for a pre-determined percentage of the monetary recovery or a success fee from the final arbitral award.[1]

While the Indian judiciary has progressively abandoned archaic common law prohibitions against champerty and maintenance, the absolute absence of a comprehensive statutory framework under the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"] engenders a landscape fraught with structural uncertainty. The lack of statutory rules leaves critical commercial variables, such as mandatory disclosure protocols, arbitrator conflicts of interest, and the enforcement of adverse cost awards, to sporadic judicial interpretation.

Part I of this article traces the historic and contemporary judicial recognition of TPF in India. Part II addressed the core regulatory faultlines and procedural frictions generated by the current statutory vacuum. Part II looks to international legislative blueprints to propose a structured path forward for domestic implementation. Finally, Part IV emphasizes that for India to fully realize its policy ambition of becoming a robust global hub for international commercial arbitration, relying on ad-hoc common law declarations is no longer tenable; the legislature must introduce an explicit statutory framework that legitimizes, defines, and regulates the operational frontiers of TPF.

The Indian Judicial Stance: Recognition Without Regulation

The foundational legality of litigation funding in India is not a novel judicial construct. Unlike early English common law, which criminalised financial maintenance to protect the integrity of royal courts, Indian jurisprudence never adopted an absolute prohibition against funding arrangements. In *Ram Coomar Coondoo and Anr. v Chunder Canto Mookerjee,* the Privy Council established that agreements to supply capital for litigation are valid unless they are found to be unconscionable, extortionate, or entered into for improper speculative objects.[2] This stance was subsequently affirmed by the Supreme Court of India ["**Supreme Court**"] in *Bar Council of India v AK Balaji,* where the court clarified that while advocates are strictly barred by professional ethics from accepting contingency fees, there is no legislative or ethical restriction preventing non-party investors from funding bona-fide disputes.[3]

Despite this historic tolerance, the intersection of TPF with structured arbitral procedures remained unmapped until the landmark decision of the Division Bench of High Court of Delhi ["**High Court**"] in *Tomorrow Sales Agency Pvt. Ltd. v SBS Holdings, Inc & Ors* ["**Tomorrow Sales**"]. In this dispute, an apex corporate body sought to execute an adverse costs award against a third-party funder after the underlying claimant's claims were dismissed by an arbitral tribunal.[4]

The High Court celebrated TPF as an "essential tool to ensure access to justice", observing that funding mechanisms level the economic playing field for businesses facing resource-rich adversaries. However, on the substantial question of financial liability, the High Court held that a third-party funder cannot be made personally liable for an adverse costs award unless the funder was an actual signatory to the arbitration agreement or had explicitly assumed such liability under the funding contract.[5]

The ruling in *Tomorrow Sales* exposes a fundamental structural asymmetry in the Indian ADR ecosystem. By insulating funders from cost liabilities in the absence of explicit contractual consent, the court protected investor capital but simultaneously created an unfair procedural advantage. A commercial funder can finance a high-risk speculative arbitral claim with absolute immunity from adverse cost consequences, leaving a successful respondent to bear massive, unrecoverable legal bills. This imbalance directly underscores the limitations of purely judicial remedies and highlights the need for precise statutory rules.

The Core Regulatory Faultlines

Conflict of Interest and Mandatory Disclosure

The absolute cornerstone of any legitimate arbitration mechanism is the independence and impartiality of the arbitral award. Under Section 12 of the Arbitration Act, read together with the Fifth and Seventh Schedules, prospective arbitrators are under a strict continuous obligation to disclose any direct or indirect business or financial relationships that could compromise their neutrality.[6]

However, in the absence of a mandatory disclosure rule for TPF, a profound systematic vulnerability arises. Large-scale institutional funders frequently maintain ongoing financial relationships, repeat appointments, or equity stakes across multiple international arbitrators. If a funder has a pre-existing commercial alignment with an arbitrator presiding over an unrelated dispute, the integrity of the panel in compromised.

Without an explicit statutory mandate forcing a funder party to immediately disclose the existence and identity of their financier at the commencement of proceedings, arbitrators cannot effectively evaluate potential conflicts of interest. This regulatory vacuum increases the risk that final arbitral awards will be challenged or set aside under Section 34 of the Arbitration Act on the ground of bias, severely undermining the finality of the process.[7]

Confidentiality versus Due Diligence

A separate procedural friction exists between statutory mandate of confidentiality and commercial realities of risk assessment. Section 42A of the Arbitration Act imposes an absolute obligation on parties, institutions and arbitrators to maintain the confidentiality of all arbitral proceedings, pleadings, and evidence.[8]

Conversely, before a professional funder commits substantial financial capital to a dispute, they must perform through legal due diligence. This requires the claimant to share proprietary documents, internal legal opinions, trade secrets, and core evidentiary matrices with a non-party financial entity.

Under the current text of the Arbitration Act, sharing this material with an external investor could technically constitute a material breach of Section 42A, potentially exposing the claimant to structural sanctions or procedural challenges. The statutory framework offers no clear guidance on whether sharing data with a prospective funder constitutes a waiver of privilege, nor does it provide standard protective exceptions for non-disclosure agreements executed during the due diligence phase.

Unconscionable Bargains and Public Policy

While *Ram Coomar Coondoo* established that litigation funding is permissible, it explicitly carved out a prohibition against agreements that are unconscionable or opposed to public policy under Section 23 of the Indian Contract Act, 1872. Because Inda lacks a regulatory body or an official code of conduct for third-party funder, there are no statutory limits on the percentage of an award an investor can claim.[9]

If an institutional funder takes advantage of a claimant's financial desperation to extract an extortionate return, such as eighty percent of the final recovery, the arrangement ceases to be an instrument of justice and becomes predatory speculation. Without statutory boundaries defining the permissible scope of funding fees, tribunals are forces to evaluate these complex financial arrangements on a case-by-case basis under the broad, ambiguous doctrine of "public policy", creating commercial unpredictability for both investors and litigants.

The Global Blueprint: Comparative Frameworks

The Singaporean Model

When structuring a domestic statutory amendment, India can derive critical insights from leading common law jurisdictions that have successfully integrated TPF. Singapore represents a premier model of cautious, highly effective legislative intervention. Through the Civil law (Amendment) Act 2017, Singapore formally abolished the torts of maintenance and champerty specifically for international commercial arbitration and related court proceedings.[10]

Crucially, rather than leaving the market unregulated, Singapore introduced the Civil law (Third-Party Funding) Regulations 2017. This framework limits eligibility to fund disputes exclusively to professional entities that meet strict capital adequacy requirement.[11] Furthermore, the Singapore International Arbitration Centre ["**SIAC**"] amended its institutional rules to empower tribunals to order the disclosure of the existence and identity of funders, as well as take funding arrangements into account when allocating costs.[12]

The Hong Kong Paradigm

In a similar vein, Hong Kong amended its Arbitration Ordinance in 2017 to incorporate Part 10A, which explicitly legalises TPF in arbitration and mediation.[13] Hong Kong's legislative model relies on a statutory "Code of Practice for Third-Party Funding of Arbitration."[14]

This code mandates that funders must maintain a minimum of twenty-five million Hong Kong dollars in clear capital, implement robust internal conflict-of-interest checks, and incorporate clear provisions regarding a party's right to retain control over the strategy of the dispute. If a funder fails to adhere to this statutory code, the amendment enables courts and tribunals to consider this non-compliance when determining cost allocations or imposing sanctions.

Proposing a Structural Blueprint for India

To address these regulatory gaps and build a predictable environment for commercial dispute resolution, the Indian Parliament must introduce targeted amendments directly into the Arbitration Act. Rather than waiting for a comprehensive code of civil litigation, a localized amendment to the law of arbitration provides a swift, high impact solution.[15]

Statutory Definitions

First, Section 2(1) of the Arbitration Act must be amended to formally define the key actors within this financial ecosystem.[16] The statute should incorporate clear definitions for both "Third-Party Funding Agreement" and "Third-Party Funder:

"Third-Party Funding Agreement" means any contract or agreement whereby a natural or judicial person, who is not a direct party to an arbitration proceeding, agrees to fund or manage the costs of all or part of the proceedings for a party, in consideration of a financial return contingent on the outcome of the dispute.

"Third-Party Funder" means any professional entity or person entering into a Third-Party Funding Agreement with a party to an arbitration.

Mandatory Continuous Disclosure

Second, the legislature should insert a new Section 12A, creating an absolute obligation for mandatory disclosure. This provision should dictate that any party availing themselves of TPF must submit a written notice to the opposite party, the arbitral institution and the tribunal. This notice must state the existence of the funding agreement and the exact identity of the funder.

This disclosure must be made either at the commencement of the arbitral proceedings or within fifteen days of executing a funding agreement during the course the course of the dispute. Crucially, the statute should clarify that while the identity and existence of the funder must be disclosed to prevent conflicts of interest, the internal financial terms of agreement remain protected by commercial privilege unless ordered otherwise by the tribunal for exceptional reasons.

Statutory Exceptions to Confidentiality

Third, to resolve the friction with Section 42A, a specific proviso must be appended to confidentiality clause.[17] This exception should explicitly state that the transmission of data, pleadings, or evidence by a party to a prospective or actual third-party funder for the sole purpose of risk evaluation or due-diligence does not constitute a breach of statutory confidentiality, provided that such disclosure is executed under a legally binding non-disclosure agreement.

Balancing Adverse Cost Liability

Finally, to correct the structural imbalance created by *Tomorrow Sales,* Section 31A of the Arbitration Act, which governs the allocation of costs, must be updated.[18] The amendment should grant tribunals the explicit statutory discretion to join a disclosed third-party funder to the cost's allocation proceedings.

The tribunal should be empowered to hold the funder liable for adverse costs award up to a maximum limit proportionate to funder's contractual financial stake in the dispute. Furthermore, the amendment should explicitly authorize tribunals to entertain applications for security for costs under Section 17 against a funded claimant, allowing tribunals to compel the funder to provide security if it is demonstrated that the underlying claimant is impecunious.[19]

Conclusion

The evolution of TPF from a prohibited common law doctrine to a recognized commercial reality represents a vital step forward for access to justice in India. As confirmed by the High Court in *Tomorrow Sales,* TPF serves as an important financial mechanism that ensures meritorious claims are not supressed by economic asymmetry. However, judicial acceptance in the absence of statutory regulation creates a highly unpredictable legal landscape.

Leaving the management of TPF to sporadic judicial interpretations creates substantial risks regarding hidden arbitrator conflicts, breaches of statutory confidentiality, and unfair exposure to unrecoverable costs for successful respondents. By looking to the legislative models of Singapore and Hong Kong, the Indian legislature can introduce clear amendments to the Arbitration Act that protect investor capital while maintaining the procedural integrity of the dispute. Implementing statutory definitions, mandatory disclosure protocols, and balanced cost-allocation mechanisms will provide the legal certainty needed to protect the interests of all participants. This legislative clarity is essential if India is to secure its place as a trusted leading destination for international commercial arbitration.

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STUDENT NOTE

The Three-Year Practice Requirement for Judicial Service: Merits, Challenges, and the Way Forward

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Abstract

The Supreme Court's 2025 decision in All India Judges Association v. Union of India reinstated the mandatory requirement of three years of advocacy practice for candidates seeking appointment as Civil Judges (Junior Division). This marked a significant shift in India's judicial recruitment policy after more than two decades during which fresh law graduates could directly appear for judicial service examinations. The decision has generated widespread discussion among law students, young advocates, judges, and legal scholars. While supporters argue that practical courtroom experience improves judicial competence, critics believe that the rule may create financial and social barriers for aspiring judges. This Student Explainer examines the constitutional framework governing subordinate judicial appointments, the evolution of judicial recruitment, the reasons behind the Supreme Court's decision, and its likely impact on the future of judicial services in India. It also suggests reforms to ensure that the objective of improving judicial quality is achieved without compromising fairness and equal opportunity. Draft Manuscript The quality of a nation's judiciary depends not only on constitutional safeguards but also on the competence, integrity, and experience of the judges who administer justice. Trial courts constitute the foundation of India's judicial system because they are the first point of contact for most citizens seeking legal remedies. Consequently, the process of selecting Civil Judges has always been a matter of considerable public importance.

The quality of a nation's judiciary depends not only on constitutional safeguards but also on the competence, integrity, and experience of the judges who administer justice. Trial courts constitute the foundation of India's judicial system because they are the first point of contact for most citizens seeking legal remedies. Consequently, the process of selecting Civil Judges has always been a matter of considerable public importance.

In May 2025, the Supreme Court of India revisited this issue in All India Judges Association v. Union of India and restored the requirement that candidates must possess at least three years of practice as advocates before becoming eligible for appointment as Civil Judges (Junior Division). The Court observed that practical courtroom exposure equips judicial officers with the maturity, confidence, and professional understanding necessary to discharge judicial functions effectively. The direction applies prospectively and was intended to improve the quality of the subordinate judiciary.[1]

The constitutional framework governing appointments to the subordinate judiciary is contained in Articles 233 to 237 of the Constitution of India. Article 233 deals with the appointment of District Judges, while Article 234 provides for the recruitment of persons other than District Judges in consultation with the State Public Service Commission and the High Court. Article 235 vests administrative control over subordinate courts in the High Courts, thereby reinforcing judicial independence. Articles 236 and 237 define important expressions and extend constitutional provisions to certain categories of magistrates. Together, these provisions ensure that judicial recruitment remains independent from executive influence while maintaining institutional accountability.[2]

The debate regarding prior advocacy experience is not new. Earlier judicial policies recognised that practical legal experience enables judges to understand court procedure, litigation strategy, appreciation of evidence, and professional ethics. However, in 2002, the Supreme Court accepted the recommendation that fresh law graduates could also be recruited to the judiciary, provided they underwent rigorous judicial training. This approach was based on the belief that structured institutional training could compensate for the absence of prior practice. Over the years, however, several High Courts expressed concerns that newly recruited judges often lacked sufficient courtroom exposure and practical understanding of litigation. After considering these concerns, the Supreme Court revisited the issue in 2025 and restored the mandatory three-year practice requirement.[3]

Supporters of the judgment argue that courtroom experience is indispensable for anyone who intends to preside over judicial proceedings. An advocate regularly interacts with clients, drafts pleadings, examines witnesses, argues legal issues, and observes how courts function on a daily basis. Such exposure develops professional confidence, ethical responsibility, and practical knowledge that cannot be acquired entirely through classroom education. A judge with prior litigation experience may be better equipped to appreciate procedural complexities, evaluate evidence, manage court proceedings, and deliver reasoned decisions from the very beginning of judicial service.

Another advantage of the requirement is that it strengthens public confidence in the justice delivery system. Litigants often expect judges to possess firsthand knowledge of courtroom practice and advocacy. Practical legal experience may also reduce the learning curve faced by newly appointed judicial officers and improve overall judicial efficiency. By ensuring that candidates possess minimum professional exposure before assuming judicial office, the Court sought to enhance both competence and credibility within the subordinate judiciary.

Despite these advantages, the judgment has attracted substantial criticism. The most significant concern relates to the financial realities faced by young advocates. The initial years of litigation often involve low remuneration, uncertain employment, and dependence upon senior advocates for professional opportunities. Many first-generation lawyers and candidates from economically weaker backgrounds may find it difficult to sustain themselves financially during the mandatory practice period. Consequently, the rule may unintentionally discourage talented graduates from pursuing judicial careers.

Another challenge concerns the verification of genuine legal practice. Mere enrolment with a State Bar Council does not necessarily establish active courtroom practice. Recognising this difficulty, the Supreme Court directed that candidates should produce appropriate certification of actual legal practice, with experience being counted from provisional enrolment rather than from passing the All India Bar Examination. Even so, implementing a uniform and transparent verification mechanism across all States remains an administrative challenge.

The impact of the rule may also differ across regions. Advocates practising in metropolitan cities often receive greater exposure to diverse litigation compared to those practising in smaller districts. Similarly, women advocates, first-generation lawyers, and candidates from rural backgrounds may encounter additional obstacles in securing meaningful litigation experience. These disparities suggest that the effectiveness of the policy depends not only upon the eligibility requirement itself but also upon adequate institutional support.

A brief comparison with other jurisdictions demonstrates that there is no single model of judicial recruitment. In the United Kingdom, judicial appointments generally require substantial legal practice before elevation to the Bench. France follows a career judiciary model in which candidates receive specialised judicial education through a national judicial school. Germany combines extensive legal education with structured practical training before judicial appointments. These examples indicate that while practical experience is valuable, it should be complemented by rigorous judicial training and transparent recruitment procedures.

The objective of the three-year practice requirement is legitimate, but its implementation can be improved. State Governments, High Courts, and Bar Councils should develop uniform guidelines for certifying genuine legal practice. Digital records of court appearances may reduce disputes regarding verification and discourage fraudulent practice certificates. Junior advocates should also receive structured mentorship under experienced practitioners to maximise the educational value of the mandatory practice period. Financial assistance or stipends for deserving young advocates could reduce economic hardship and promote equal opportunity. Finally, State Judicial Academies should continue providing comprehensive induction training so that newly appointed judges can effectively combine practical experience with judicial ethics, case management, and constitutional values.[4]

The restoration of the three-year practice requirement represents one of the most significant reforms in judicial recruitment in recent years. It reflects the Supreme Court's view that practical courtroom exposure is essential for the effective functioning of trial courts and the administration of justice. At the same time, the policy raises important concerns relating to accessibility, financial inequality, and implementation. A balanced approach that combines practical legal experience with transparent verification, institutional support, and rigorous judicial training can strengthen the subordinate judiciary while ensuring that deserving candidates from diverse backgrounds continue to have meaningful access to judicial service.

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